United Nations

Report of the United Nations Commission on International Trade Law

on the work of its thirtieth session

12-30 May 1997

General Assembly
Official Records • Fifty-second Session
Supplement No.17 (A/52/17)

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ISSN 0251-9127

[Original: English]
[4 July 1997]

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INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's thirtieth session, held at Vienna from 12 to 30 May 1997.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

I. ORGANIZATION OF THE SESSION

A. Opening of the session

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its thirtieth session on 12 May 1997. The session was opened by Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel.

B. Membership and attendance

4. The General Assembly, by its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the General Assembly increased the membership of the Commission from 29 to 36 States. The present members of the Commission, elected on 4 November 1991 and on 28 November 1994, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1]

Algeria (2001), Argentina (1998), Australia (2001), Austria (1998), Botswana (2001), Brazil (2001), Bulgaria (2001), Cameroon (2001), Chile (1998), China (2001), Ecuador (1998), Egypt (2001), Finland (2001), France (2001), Germany (2001), Hungary (1998), India (1998), Iran (Islamic Republic of) (1998), Italy (1998), Japan (2001), Kenya (1998), Mexico (2001), Nigeria (2001), Poland (1998), Russian Federation (2001), Saudi Arabia (1998), Singapore (2001), Slovakia (1998), Spain (1998), Sudan (1998), Thailand (1998), Uganda (1998), United Kingdom of Great Britain and Northern Ireland (2001), United Republic of Tanzania (1998), United States of America (1998) and Uruguay (1998).

5. With the exception of Botswana and Egypt, all members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Angola, Azerbaijan, Bangladesh, Belarus, Bolivia, Burkina Faso, Canada, Colombia, Croatia, Cyprus, Czech Republic, Gabon, Greece, Holy See, Indonesia, Iraq, Ireland, Israel, Kuwait, Lebanon, Morocco, Netherlands, Oman, Paraguay, Peru, Republic of Korea, Romania, Sweden, Switzerland, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine and Venezuela.

7. The session was also attended by observers from the following international organizations:

(a) United Nations system

World Bank
United Nations Industrial Development Organization

(b) Intergovernmental organizations

Hague Conference on Private International Law
League of Arab States
Organisation for Economic Co-operation and Development

(c) International non-governmental organizations invited by the Commission

Cairo Regional Centre for International Commercial Arbitration
European Banking Federation
Group of Thirty
Institute of International Business Law and Practice of the International Chamber of Commerce
International Association of Insolvency Practitioners
International Association of Lawyers
International Bar Association
International Women's Insolvency and Restructuring Confederation

8. The Commission was appreciative of the fact that international non-governmental organizations that had expertise regarding the major items on the agenda of the current session heeded the invitation to take part in the session. Being aware that it was crucial for the quality of texts formulated by the Commission that relevant non-governmental organizations should participate in the sessions of the Commission and its working groups, the Commission requested the Secretariat to continue to invite such organizations to its sessions based on their particular qualifications.

C. Election of officers[2]

9. The Commission elected the following officers:

Chairman:	Mr. Joseph Fred Bossa (Uganda)
Vice-Chairmen:	Mr. Ricardo Sandoval López (Chile) Mr. Janusz Krzyzewski (Poland) Mr. Manuel Olivencia Ruiz (Spain)
Rapporteur:	Mr. Ter Kim Cheu (Singapore)

D. Agenda

10. The agenda of the session, as adopted by the Commission at its 607th meeting, on 12 May 1997, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Cross-border insolvency.
5. Privately financed infrastructure projects.
6. Electronic commerce.
7. Receivables financing: assignment of receivables.
8. Monitoring implementation of the 1958 New York Convention.
9. Case law on UNCITRAL texts (CLOUT).

10. Training and assistance.

11. Status and promotion of UNCITRAL legal texts.

12. General Assembly resolutions on the work of the Commission.

13. Other business.

14. Date and place of future meetings.

15. Adoption of the report of the Commission.

E. Adoption of the report

11. At its 630th and 631st meetings, on 30 May 1997, the Commission adopted the present report by consensus.

II. DRAFT UNCITRAL MODEL LEGISLATIVE PROVISIONS ON CROSS-BORDER INSOLVENCY

A. Background

1. Draft Model Legislative Provisions

12. After a preliminary discussion by the Commission in 1993 of practical problems caused by the disharmony among national laws governing cross-border insolvency, the Commission requested an in-depth study on the desirability and feasibility of uniform rules in that area of law.[3] That discussion was suggested by the Secretariat as a result of proposals made at the UNCITRAL Congress held in 1992 under the theme "Uniform Commercial Law in the Twenty-first Century".[4] Prior to the decision to undertake work on cross-border insolvency, UNCITRAL and the International Association of Insolvency Practitioners (INSOL) held a Colloquium on Cross-Border Insolvency at Vienna from 17 to 19 April 1994, involving insolvency practitioners from various disciplines, judges, government officials and representatives of other interested sectors, including lenders. The suggestion arising from the Colloquium was that work by the Commission should, at least at the initial stage, have the limited but useful goal of facilitating judicial cooperation, court access for foreign insolvency administrators and recognition of foreign insolvency proceedings.[5] Subsequently, an international meeting of judges was held specifically to elicit their views on work by the Commission in that area (UNCITRAL-INSOL Judicial Colloquium on Cross-Border Insolvency, held at Toronto, Canada, from 22 to 23 March 1995). The view of the participating judges and government officials was that it would be worthwhile for the Commission to provide a legislative framework for judicial cooperation, court access for foreign insolvency administrators and recognition of foreign insolvency proceedings.[6]

13. At its twenty-eighth session, in May 1995, the Commission expressed its appreciation for the assistance provided by INSOL and considered that it would be worthwhile to prepare uniform legislative provisions on judicial cooperation in cross-border insolvencies, on court access for foreign insolvency administrators and on recognition of foreign insolvency proceedings.[7] The task of preparing such uniform provisions was entrusted to one of the Commission's three intergovernmental working groups, which for this project was named the Working Group on Insolvency Law.

14. The Working Group devoted four two-week sessions to the work on the project.[8]

15. At its nineteenth and twentieth sessions, the Working Group considered the question of the form of the instrument being prepared. A number of views and arguments were considered in favour of preparing model provisions for national legislation, model provisions for an international treaty, and an international treaty. After considering the various views, the Working Group decided to continue and complete its work on the draft Model Provisions. That would not exclude the possibility of undertaking work towards model treaty provisions or a convention on judicial cooperation in cross-border insolvency, if the Commission at a later stage so decided (A/CN.9/422, paras. 14-16, and A/CN.9/433, paras. 16-20).

16. At the close of its twenty-first session, in January 1997, the Working Group noted that it would have wished to have more time available for completing its review of the draft. Yet it decided, in line with the hope expressed by the Commission at its twenty-ninth session,[9] to submit the draft UNCITRAL Model Provisions on Cross-Border Insolvency to the Commission for consideration and completion at its thirtieth session, in 1997 (A/CN.9/435, para. 16).

17. After the twenty-first session of the Working Group, the Second UNCITRAL-INSOL Multinational Judicial Colloquium on Cross-Border Insolvency was held from 22 to 23 March 1997 in conjunction with the 5th World Congress of the International Association of Insolvency Practitioners, held at New Orleans, United States of America, from 23 to 26 March 1997.

18. It was reported at the thirtieth session of the Commission that the Colloquium was attended by 45 judges, judicial administrators and government officials from 20 countries. The participants discussed issues of cross-border insolvency from the judicial perspective. The two dominant issues were the practice of judicial cooperation in cross-border insolvency cases and the draft Model Provisions as prepared by the Working Group.

19. Reports of a number of cases in which judicial cooperation had in fact occurred had been given by the judges involved in the cases. From those reports a number of points emerged, which might be summarized as follows: (a) communication between courts was possible, but should be done carefully and with appropriate safeguards for the protection of substantive and procedural rights of the parties; (b) communication should be done openly, with advance notice to the parties involved and in the presence of those parties, except in extreme circumstances; (c) communications that might be exchanged were various and included exchanges of formal court orders or judgements; supply of informal writings of general information, questions and observations; transmission of transcripts of court proceedings; (d) means of communication included telephone, fax, electronic mail facilities and video; and (e) where communication was necessary and was intelligently used, there could be considerable benefits for the persons involved in, and affected by, the cross-border insolvency.

20. It was further reported that even in the absence of communication between courts, the salutary goals of coordination of insolvency proceedings might still be achieved, for example, through protocols between insolvency administrators and agreements to utilize the principles contained in the Cross-Border Insolvency Concordat prepared by the International Bar Association.

21. As to the draft Model Provisions, there was general agreement that the implementation of such legislation would give useful formal foundation to the communication process developed by the courts in some countries. The Colloquium expressed recognition for the high degree of cooperation achieved within the UNCITRAL Working Group on Insolvency Law during the preparation of the draft. Participants welcomed providing the necessary legislative basis for foreign insolvency administrators to have easier and quicker access to courts, which was extremely important in cases of cross-border insolvency. Providing such access was seen as a matter of common sense. It was also observed that, even though the draft Model Provisions had not yet been finalized by the Commission, the draft could already be referred to as showing the way in which cases of cross-border insolvency could be dealt with.

22. A further observation at the Colloquium was that old methods of dealing with cross-border insolvency would not be sufficient when parties and courts were faced with the difficulties of rescuing a corporate enterprise in two or more States simultaneously. What was required was a new spirit which had to be one of cooperation, where each jurisdiction was prepared, where appropriate, to defer to the other and where each jurisdiction was sensitive to the concerns of the other. It was considered that the best way to ensure that the judges were able to cooperate was to give them the statutory authority to do so, as was done in the Model Provisions. It was generally considered that the Model Provisions, when enacted, would constitute a major improvement in dealing with cross-border insolvency cases.

2. Draft Guide to Enactment of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency

23. The Commission considered that, in order to make the model legislative text adopted by the Commission a more effective tool for modernizing international aspects of insolvency law, it would be useful to formulate a guide designed to assist States in enacting and applying the Model Provisions. Such a guide, which should contain background and explanatory information to the Model Provisions as a whole and to individual articles, would be directed primarily to executive branches of Governments and legislators using the Model Provisions in preparing the necessary legislative revisions, but would also provide useful insight and information to other users of the text such as academics, judges and practitioners. The guide might also assist States in considering which, if any, of the provisions should be varied in order to be adapted to the particular national circumstances.

24. At the current session, the Commission had before it the draft Guide to Enactment of the UNCITRAL Model Provisions on Cross-Border Insolvency, prepared by the Secretariat (A/CN.9/436). (For the decision of the Commission on the preparation and publication of the Guide, see paragraph 220 below.)

B. Consideration of the draft Model Legislative Provisions

1. General remarks

25. Strong support was expressed in the Commission in favour of the general aims and principles of the Model Provisions. It was generally considered that the text under discussion constituted a realistic approach to issues of cross-border insolvency, which in many countries were in urgent need of legislative regulation.

2. Form of instrument

26. The Commission recalled the considerations by the Working Group on Insolvency Law on whether the text should be prepared as model legislation or as a treaty or model treaty (A/CN.9/422, paras. 14-16, and A/CN.9/433, paras. 16-20). The prevailing view was that the text should be completed as model legislation, the form that, because of its flexibility, was best suited to induce in the shortest possible time harmonized modernization of national laws in the area of cross-border insolvency, an area of law that hitherto had not been subject to unification. However, the view was also expressed that a legislative text on international judicial cooperation required a high degree of uniformity and had to include the requirement of reciprocity, which could only be achieved by an international treaty and not by model legislation, from which the States could deviate when enacting it. On that basis, a suggestion was made that, after completing the work on the draft Model Provisions, the Commission should consider the desirability and feasibility of preparing model treaty provisions or a draft treaty on judicial cooperation in cross-border insolvency. (The deliberations of the Commission on that suggestion are reflected below in paragraphs 223 and 224.)

3. Consideration of draft articles

27. The Commission took as the basis of its considerations the draft UNCITRAL Model Provisions on Cross-Border Insolvency as contained in the annex to document A/CN.9/435. The considerations commenced with draft article 14, because it was thought that finalizing articles 14 to 17 (recognition of foreign proceedings and consequences of recognition) would facilitate agreement on other provisions.

28. A drafting group was established by the Commission with the task of implementing the Commission's decisions, reviewing the drafting aspects of the text as a whole, and ensuring concordance among the six language versions of the text.

Article 14. Grounds for refusing recognition

29. The text of the draft article as considered by the Commission was as follows:

"[Subject to article 6,] recognition of a foreign proceeding and of the appointment of the foreign representative may be refused only where:

"(a) the foreign proceeding is not a proceeding as defined in article 2(a) or the foreign representative has not been appointed within the meaning of article 2(d); or

"(b) ...*

"*Subparagraph (b) would be the appropriate location for including any additional ground for refusing to recognize a foreign proceeding, should the Commission so decide."

30. It was suggested to add to the current wording of draft article 14 the following two subparagraphs: "(b) the application is not made before [a] [the] Court having competence pursuant to article 4"; and "(c) the application does not satisfy the requirements provided for in article 13". It was said that the purpose of the article, as supplemented by the suggested subparagraphs, was to indicate that, if recognition was not contrary to the public policy of the enacting State, if the application was submitted to the competent court and if the application met the requirements set out in article 13, the court was obligated to grant recognition.

31. While general agreement was expressed with the substance of the suggestion, the proposed subparagraph (b) was criticized because it interfered with the procedures governing cases where the court received an application but was not competent to deal with it. Under those procedures the court might, for example, be directed to transmit the application to the competent court or to give the party the opportunity to correct the mistake. The Commission agreed with the criticism and, in order to express more clearly the purpose of articles 13 and 14, which was to establish a system of quasi-automatic recognition where the conditions established by the Model Provisions were met, decided that article 14 should read along the following lines, subject to review by the drafting group:

"Subject to article 6, a foreign proceeding shall be recognized if the foreign representative applying for recognition has been appointed within the meaning of article 2(d), if the foreign proceeding is a proceeding within the meaning of article 2(a), if the application meets the requirements of article 13(2) and (7), and if the application has been submitted to the court referred to in article 4."

32. A suggestion was made that public policy should only appear in article 14 (as a ground for refusal of recognition) and not as a general reservation applicable to other actions that might be taken under the Model Provisions. It was said that it was not appropriate to subject to the reservation of public policy, for example, access by the foreign representative to courts of the enacting State, which was not conditioned on recognition of the foreign proceeding. The Commission, however, considered that article 6 should provide a general public policy reservation for any action governed by the Model

Provisions. It was agreed that the concept of public policy in articles 6 and 14 should be the same. As to the exact formulation of the concept, the decision was postponed until the consideration of article 6 (see paragraphs 170-173 below).

33. In the context of the discussion of article 14, a proposal was made to include a new paragraph in article 14 providing that recognition of a foreign proceeding should be granted only to such limited effects as were consistent with the purposes of ensuring coordination of proceedings under the provisions (yet to be formulated) on coordination between a pending main proceeding in the enacting State and a subsequent application for recognition of a foreign main or non-main proceeding. The Commission postponed the consideration of that matter to a later time, when it would consider provisions on concurrent proceedings (see paragraphs 106-110 below).

Article 15. Relief upon application for recognition of a foreign proceeding

34. The text of draft article 15, as considered by the Commission, was as follows:

"(1) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where necessary to protect the assets of the debtor or the interests of the creditors, grant any relief mentioned in article 17.

"(2) [Insert provisions (or refer to provisions in force in the enacting State) relating to notice].

"(3) Unless extended under article 17(1)(c), the relief granted under this article terminates when the application for recognition is decided upon.

"(4) The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding."

General remarks

35. It was noted that article 15 dealt with relief that might be granted by the competent court in the enacting State, upon request by a foreign representative, prior to recognition of the foreign proceeding. Such relief was discretionary and, as such, did not flow automatically from an application by the foreign representative.

Paragraph (1)

36. The Working Group considered at length the question whether the court should be empowered to grant in the hypothesis of article 15 any relief mentioned in article 17 or whether the relief available prior to recognition should have a more limited scope.

37. It was noted that article 15(1) authorized the competent court to grant types of relief which were typically available under collective insolvency proceedings (e.g. staying the commencement or continuation of individual actions or individual proceedings under article 17(1)(a) or entrusting the administration and realization of all or part of the debtor's assets located in the enacting State to the foreign representative or another person designated by the court under article 17(1)(e)). It was pointed out that in some jurisdictions the relief that could be granted by the court before the opening of insolvency proceedings or before recognition of a foreign proceeding was limited to relief measures of an individual nature provided under national rules on civil procedure (i.e. measures covering specific assets identified by a creditor) and did not extend to special relief measures available under special rules

concerning collective insolvency proceedings. The view was expressed that some of those jurisdictions would have difficulties to implement article 15 as currently drafted, as it gave the court a latitude of discretion that was not customary in those jurisdictions. It was suggested that, with a view to stressing that the relief available before recognition was only of an individual nature, it was suggested that paragraph (1) could be redrafted as follows:

> "From the time of filing an application for recognition until the application is decided upon, the court referred to in article 4 may, at the request of the foreign representative, grant such provisional relief for the purposes of protecting the assets of the debtor or the interests of the creditor as could be granted under any law of this State other than this Law to an individual creditor seeking to avoid irreparable harm to a prima facie enforceable claim for an amount equal to the amount of the debtor's liabilities, as actually known or reasonably estimated under the foreign proceeding."

Alternatively, it was suggested that a provision along the lines of the above proposal should be included in the Model Provisions, either in the text or as a footnote, as an option for legislators.

38. Various interventions were made in favour of defining the circumstances under which the court would grant relief under article 15(1) as well as the scope of such relief as distinct from the relief provided in article 17(1). A widely shared view was that a "block" reference in paragraph (1) to the relief mentioned in article 17(1) was either too wide or did not provide sufficient guidance to the court in the exercise of its discretion under article 15. At the same time, however, the widely prevailing view was that, in revising paragraph (1), the Commission should not limit the relief available before recognition only to relief measures of an individual nature provided under national rules on civil procedure.

39. It was noted that the purpose of provisional relief under article 15 was, inter alia, to ensure the preservation of the assets of the debtor and the rescue of financially troubled enterprises. An exclusion of collective relief measures, such as the ones mentioned in article 17(1)(a) and (e), might frustrate those objectives, for instance in cases where only relief of such a nature would be capable of preventing the dissipation or deterioration of the debtor's assets. Furthermore, it was noted that the difficulty of granting collective relief prior to recognition of a foreign proceeding was not a problem that occurred in most jurisdictions. In a number of jurisdictions that did not ordinarily provide for collective types of relief prior to the opening of insolvency proceedings, there would be no fundamental obstacle to granting such type of provisional relief where proceedings had been opened in a foreign jurisdiction and an application for the recognition of such proceedings had been submitted to the local court. It was widely felt that the scope of paragraph (1) would be seriously weakened if that provision were to include more restrictive options formulated to address specific difficulties of particular jurisdictions.

40. Having agreed on the need for retaining the power of the court to grant provisional relief under article 15, including relief of a collective nature, while at the same time distinguishing between relief available prior to recognition and the relief available under article 17(1), the Commission proceeded to consider the circumstances under which the court would grant relief under article 15(1) as well as the scope of such relief.

41. With a view to clarifying the nature of the relief provided under article 15 and the circumstances under which it was to be granted, the Commission agreed that such relief should be expressly qualified as "provisional" and that it should only be available where urgently needed for the purpose of protecting the assets of the debtor or the interests of the creditors. The drafting group was requested to redraft paragraph (1) accordingly.

42. It was suggested that the stay of the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities mentioned in article 17(1)(a) was a far-reaching measure which would not be entirely appropriate within the context of article 15. At that early juncture, before the decision on recognition, there was no impending need for suspending the continuation of actions already pending against the debtor or for staying the commencement of new actions. It was proposed that, as a provisional measure, it should be sufficient to stay measures of execution against the debtor's assets, a solution which was found in a number of jurisdictions. The Commission accepted that proposal and requested the drafting group to provide appropriate language to that effect. It was agreed that the Guide to Enactment should indicate that, in the context of article 15, the term "execution" should be interpreted broadly.

43. The question was asked whether the reference to article 17(1)(d) in article 15(1) implied an unlimited power to search for potentially relevant evidence or to conduct a kind of "pre-trial discovery", a procedure which was known in some legal systems, but which would cause considerable difficulties in a number of jurisdictions. In that connection, it was suggested that, prior to recognition, the relief should essentially aim at securing and gaining control over the debtor's books, records and documents, and that subparagraph (d) of article 17(1) should be adjusted to meet the more limited needs of the provisional relief under article 15(1). In response to that suggestion it was observed that the need for obtaining information and securing evidence on the debtor's affairs might not be limited to securing and gaining control over the debtor's books, records and documents and that other types of evidence and information should not be excluded. Another suggestion was expressly to provide that relief of the type mentioned in article 17(1)(d) that was granted under article 15(1) was subject to the requirements and limitations of the procedural laws of the enacting State. The prevailing view, however, was that the relief mentioned in article 17(1)(d), which concerned specific points of evidence, was also necessary as provisional relief. In granting such relief under article 15(1), the court would be guided by its own rules on procedure on the taking of evidence and would not introduce discovery mechanisms unknown in the enacting State. Therefore, an express reference to limitations or requirements of national law was unnecessary. Having considered the various views expressed, the Commission agreed that the court of the enacting State should be given the discretion, under article 15(1), to grant the relief mentioned in article 17(1)(d) without specific restrictions.

44. With regard to the reference to subparagraph (e) of article 17(1), it was observed in various interventions that entrusting the administration or realization of debtor's assets to the foreign representative might not always be warranted before the decision on recognition of the foreign proceeding. The administration of the debtor's assets and in particular their realization might represent irreversible measures which would not be compatible with the provisional nature of the relief under article 15(1). It was proposed that, within the context of article 15(1), the powers of the foreign representative or other person designated by the court should be limited to measures destined to preserve three categories of assets: perishable assets, assets susceptible of devaluation and assets otherwise in jeopardy, such as where there was an imminent danger of their being concealed or dissipated. While some concerns were voiced as to the appropriateness of including the last category of assets, which was considered to be insufficiently defined, it was decided that administration or realization measures under article 15(1) should also encompass measures taken to preserve assets found to be in jeopardy. The drafting group was requested to formulate appropriate language to that effect.

45. Subject to the amendments mentioned above, the Commission approved the substance of paragraph (1).

Paragraphs (2), (3) and (4)

46. The Commission approved the substance of paragraphs (2) and (3) and reserved its decision on paragraph (4) until it had considered article 22 concerning concurrent proceedings (see paragraphs 94-116 below).

Article 16. Effects of recognition of a foreign main proceeding

47. The text of the draft article as considered by the Commission was as follows:

"(1) Upon recognition of a foreign main proceeding,

"(a) the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities are stayed;

"(b) the right to transfer, dispose of or encumber any assets of the debtor are suspended.

"(2) The scope of the stay and suspension referred to in paragraph (1) of this article is subject to [refer to any exceptions or limitations that are applicable under laws of the enacting State relating to insolvency].

"(3) Paragraph (1)(a) of this article does not affect the right to commence individual actions or proceedings, to the extent this is necessary to preserve a claim against the debtor.

"(4) Paragraph (1) of this article does not affect the right to request the commencement of a proceeding under [identify laws of the enacting State relating to insolvency] or the right to file claims in such a proceeding.

"[(5) This article does not apply if, at the time of application for recognition, a proceeding is pending concerning the debtor under [identify laws of the enacting State relating to insolvency].]"

48. The Commission noted that, while relief under draft articles 15 and 17 was subject to the discretion of the court, the effects provided by draft article 16(1) were not, i.e. they either flowed automatically from recognition of the foreign main proceeding or, where an appropriate court order was needed for those effects to become operative, as was true in some legal systems, the court had to issue the order. Notwithstanding the "automatic" or "mandatory" nature of the effects under article 16, their scope depended on exceptions or limitations that might exist in the law of the enacting State (e.g. as regards the enforcement of claims by secured creditors, payments by the debtor in the ordinary course of business, initiation of court actions for claims that arose after the commencement of the insolvency proceeding (or after recognition of a foreign main proceeding), or completion of open financial-market transactions). Another difference between relief under draft articles 15 and 17 and the effects under draft article 16 was that the relief under draft articles 15 and 17 might be issued in favour of main as well as non-main proceedings, while the effects of draft article 16 applied only to main proceedings.

Paragraphs (1) and (2)

49. The view was expressed that in some jurisdictions the broad and far-reaching effects envisaged in article 16(1) could only be granted under stringent requirements to be verified by the competent court. In those jurisdictions, the courts might, for example, require proof of imminent danger to the assets of the debtor that would result from the continuation of individual actions or from the transfer or disposal

of the assets. It was stressed that requirements for triggering the effects such as those envisaged in article 16(1) were stringent because those effects carried with it a "social stigma" associated with bankruptcy. Those requirements, it was said, would need to be observed also in the hypothesis of article 16, so as to avoid giving rise in the enacting State to the far-reaching and socially weighty consequences of foreign insolvency proceedings that might have been opened under less stringent requirements than the requirements applicable in the enacting State. As a result of that concern, it was suggested to provide in paragraph (2) that "The requirements of the stay and suspension" should be subject to local law and not, as the current draft was worded, that "The scope of the stay and suspension" was subject to local law.

50. In response it was said that the automatic consequences envisaged in article 16(1) were necessary to allow taking steps for organizing an orderly, coordinated and fair cross-border insolvency proceeding. In order to achieve those benefits, it was justified to impose on the insolvent debtor the possibly harsher consequences of insolvency proceedings in the country where it maintained a limited business presence, even if the country where the centre of the debtor's main interests was situated posed less stringent conditions for the opening of insolvency proceedings. Thus, the effects of recognition in the enacting State of foreign main proceedings should not be subject to possibly difficult evidentiary requirements applicable to a request for opening insolvency proceedings in the enacting State. Besides, sufficient safeguards had been incorporated in the draft Model Provisions, notably article 19(3), to protect the interests of interested parties, including the debtor. After discussion, the Commission confirmed the concept of the current draft article 16(1) and (2) and decided to keep the words "The scope of the stay and suspension ..." in paragraph (2).

51. The view was expressed that the automatic effects under article 16 of the recognition of a foreign main proceeding should be expressly limited (e.g. by providing a time period after which they would lapse) or in another way made dependent on the continued existence of the foreign main proceeding. That view was not adopted since existing provisions, in particular article 19(3), provided sufficient protection against consequences in the enacting State that should be terminated or modified as a result of changes in the foreign main proceeding. (The deliberations of the Commission concerning article 19(3) are reflected below in paragraphs 86-93.)

52. A suggestion was made that the article should expressly provide that the effects in the country of recognition should not go beyond the effects of the proceeding in the country of origin; in particular, it was said, it was necessary to avoid giving in the country of recognition a more favourable treatment to the foreign representative than he or she would enjoy in the country where the main proceeding was opened. That view was not adopted by the Commission, first, on the practical ground that it was not reasonable to require the court in the enacting State to engage in a possibly complex analysis of the foreign law to determine which effects were to be given in the enacting State to the foreign proceeding and, secondly, because recognition, as conceived by the Model Provisions, implied granting effects that were necessary for a coordinated conduct of a cross-border insolvency rather than importing the consequences of the foreign law into the enacting State.

53. The Commission discussed whether recognition of a foreign "interim proceeding" created a risk of extending automatic effects of article 16 to a proceeding that had an insufficient or provisional basis (recognition of foreign interim proceedings was covered by the article by virtue of the definition of "foreign proceeding" in article 2(a), which covered also "an interim proceeding"). It was pointed out that, under the law of many countries, insolvency proceedings would often be commenced and conducted on an "interim" or "provisional" basis and that, except for the interim nature of the proceedings, such proceedings, in order to be recognized, had to be continuously subject to the supervision of the foreign court and had to meet all the other requisites of the definition in article 2(a). Therefore, it was argued, "interim proceedings" should not be distinguished from other insolvency proceedings for the purposes

of recognition. It was indicated that, should there be a doubt in the enacting State as to whether a foreign "interim proceeding" had a sufficient basis for the automatic effects of draft article 16, any affected person could seek termination of the stay under draft article 19(3). (The deliberations of the Commission concerning article 19(3) are reflected below in paragraphs 86-93.) The Commission found those arguments convincing and decided that the provisions of draft article 16 should apply also to "interim" foreign proceedings.

54. A concern was expressed that recognition of a foreign main proceeding, while appropriately resulting in a stay of judicial proceedings, should not stay arbitral proceedings. It was stated that, as a matter of principle, an automatic stay of arbitral proceedings might unduly interfere with the freedom of contract of the parties who had agreed to submit a dispute to arbitration. Furthermore, in practical terms, it might be difficult to implement the automatic stay in the case of an arbitration that took place neither in the enacting State nor in the State where the main proceeding was conducted. It was stated in response that applying the automatic effects of article 16 was not incompatible with the principles governing arbitration, since national laws contained different types of limitations to the effectiveness of arbitration agreements, and the temporary stay provided in article 16 was one of them. Furthermore, the wording in square brackets in draft article 19(3) offered sufficient flexibility for the court in the enacting State to terminate the stay under draft article 16, taking into account the interest of the parties. The Commission also noted that a stay under the Model Provisions would not contravene obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[10] (New York, 1958).

55. It was understood in the Commission that the "stay of individual actions or individual proceedings" also meant that any execution of a decision was stayed. Noting that understanding, a proposal was made for restricting paragraph (1)(a) so that individual proceedings would be able to continue but that the execution of any decision emanating from those proceedings would be stayed. The Commission, however, decided that the automatic stay should cover not only execution of claims but also the individual actions and proceedings conducted prior to execution; that was considered necessary to allow the foreign representative the necessary temporary respite to organize the affairs of the debtor without having to participate in possibly numerous actions against the debtor. It was added that the wording in square brackets in draft article 19(3) offered the possibility for the court to modify the stay under draft article 16, taking into account the circumstances of the case (however, see paragraph 88 below). The Commission decided that paragraph (1) should expressly state that the stay of individual actions and proceedings covered also "execution against the debtor's assets", similarly as was decided with respect to article 15(1).

Paragraph (3)

56. It was observed that the draft Model Provisions did not address the question whether the running of the limitation period for a claim was interrupted when the claimant was unable to commence individual proceedings as a result of article 16(1)(a). Since it was not feasible to introduce a harmonized rule on that question, and since it was necessary to protect creditors from losing their claims because of a stay pursuant to article 16(1)(a), paragraph (3) had been added to authorize the commencement of individual actions to the extent that it was necessary to preserve claims against the debtor.

57. A view was expressed that paragraph (3) was superfluous and potentially confusing in a State where a demand of payment or performance served by the creditor on the debtor had the effect of interrupting the limitation period. In response it was stated that also in such a State paragraph (3) would still be useful, first, because the question of the interruption of the limitation period might, as a result of conflict-of-laws rules, be governed by the law of a State in which the opening of insolvency proceeding did not

interrupt the running of the limitation period and, secondly, as assurance to foreign claimants that their claims would not be prejudiced in the enacting State.

Paragraph (4)

58. The Commission found the substance of paragraph (4) acceptable.

Paragraph (5)

59. The Commission postponed its consideration of paragraph (5) until its consideration of draft article 22 (see paragraphs 106-110 below).

Conclusion

60. Subject to the above decisions, the Commission approved the substance of article 16 and referred it to the drafting group to review its language and implement those decisions.

Article 17. Relief that may be granted upon recognition of a foreign proceeding

61. The text of the draft article, as considered by the Commission, was as follows:

"(1) Upon recognition of a foreign main or non-main proceeding, where necessary to protect the assets of the debtor or the interests of creditors, the court may, at the request of the foreign representative, grant any appropriate relief including:

"(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under article 16(1)(a);

"(b) suspending the right to transfer, dispose of or encumber any assets of the debtor to the extent they have not been suspended under article 16(1)(b);

"(c) extending relief granted under article 15;

"(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

"(e) entrusting the administration and realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;

"(f) granting any additional relief that may be available to [insert the title of a person or body administering a liquidation or reorganization under the law of the enacting State] under the laws of this State.

"(2) Upon recognition of a foreign main or non-main proceeding, the court may entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.

"(3) In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets falling under the authority of the foreign representative or concerns information required in that foreign non-main proceeding."

General remarks

62. It was noted that, unlike article 16, which dealt with mandatory effects of the recognition of a foreign main proceeding, article 17 concerned relief that might be granted by the competent court in the enacting State at its discretion, following recognition of the foreign proceeding. Such relief was available to representatives appointed in both main and non-main proceedings.

63. General support was expressed to the need for a provision such as article 17 in the interest of an efficient administration of cross-border insolvencies and the protection of the debtor's assets and the interests of creditors.

Paragraph (1)

64. In the light of the deliberation of the Commission concerning article 15(1), it was agreed that subparagraph (a) should expressly mention the stay of execution against the debtor's assets. It was also agreed that the expression "entrusting the administration and realization" in subparagraph (e) should instead read "entrusting the administration or realization".

65. A suggestion was made to mention the authority of the court to make on-site inspections among the evidentiary measures that could be taken pursuant to subparagraph (d). It was also suggested that subparagraph (d) should expressly state that all the measures mentioned therein were subject to the requirements and procedures provided under local law. Those suggestions did not attract sufficient support and were not adopted.

66. The Commission generally approved the substance of paragraph (1) and referred it to the drafting group.

Paragraph (2)

67. The question was asked whether the measure envisaged in paragraph (2) could be granted by the court ex officio or whether it required an application by the interested party. In response it was noted that distribution of assets was an important measure that directly affected the interests of the creditors and that was usually initiated by the representative in an insolvency proceeding. It was further observed that the recognition of the foreign proceeding only gave the foreign representative the right to apply for relief and did not generate any automatic effect in addition to the mandatory effects provided in article 16. Therefore, the relief provided in paragraph (2) was to be granted upon request by the foreign representative.

68. The Commission approved the substance of paragraph (1) and referred it to the drafting group.

Paragraph (3)

69. Various interventions were made enquiring about the meaning of the phrase "assets falling under the authority of the foreign representative", which was found to be unclear. It was suggested that, when read in conjunction with paragraph (2), paragraph (3) could be construed to the effect that the court of the enacting State that recognized a foreign non-main proceeding would be bound to recognize also the

foreign representative's authority over the debtor's assets in respect of which he or she claimed to have authority. The view was expressed that such a result would be inconsistent with the proposition, reflected in paragraph (1) of article 16, that there should be no mandatory effects for foreign non-main proceedings.

70. The Commission considered various proposals to clarify the meaning of paragraph (3). One proposal was to make reference in paragraph (3) to assets that were originally located in the State where the foreign proceeding had been opened and which had been improperly transferred abroad. That proposal was found to be too restrictive, as the foreign representative might, for instance, have a legitimate claim to administer assets originally located in the enacting State or which were lawfully transferred thereto. Another suggestion was that the reference to assets under the foreign representative's authority should be replaced with a reference to assets subject to control or supervision by a foreign court. In response to that suggestion, it was observed that the proposed formulation, while appropriate for the definition of foreign proceedings in article 2(a), was inadequate for qualifying the assets to which article 17(3) related. Depending on the type and nature of the insolvency proceeding, the debtor's assets might not always be under the actual "control or supervision" of the foreign court. Yet another proposal was to use language such as "assets which the foreign representative had been entrusted to administer". Objections were also raised to that suggestion which would require an assessment of the powers given to the foreign representative in the foreign proceeding under the laws applicable to that foreign proceeding.

71. It was pointed out that, in the context of the Model Provisions, the effects of the recognition of a foreign non-main proceeding were limited. In that connection, it was stated that a formulation which referred to the authority or powers of the administrator under the foreign non-main proceeding, or which referred to the supervision of the court over assets in the foreign non-main proceeding, might represent an importation of the effects of the foreign proceeding. That result would not be compatible with the limited purpose of recognition of the foreign proceeding under the Model Provisions.

72. After considering the various views expressed, it was generally felt that paragraph (3) should be redrafted for the purpose of empowering the court of the enacting State to determine, in the light of its own laws, which of the assets located in the territory of the enacting State should be administered in the foreign proceeding.

73. Subject to those decisions, the Commission approved the substance of paragraph (3) and referred it to the drafting group.

Article 18. Notice of recognition and relief granted upon recognition

74. The text of article 18, as considered by the Commission, was as follows:

> "Notice of recognition of a foreign proceeding [and of the effects of recognition of a foreign main proceeding under article 16] shall be given in accordance with [the procedural rules governing notice of [the commencement of] a proceeding under the insolvency laws of this State]."

75. It was observed that the notice requirement, provided in the interest of local creditors and other interested local persons, did not describe in detail the kind of information to be contained in the notice. If the court of the enacting State considered that particular information should be included in the notice (e.g. details about the stay and suspension pursuant to article 16 or the relief granted under article 17), the court might give an appropriate order to the foreign representative, as a condition for granting relief,

pursuant to article 19(2). It was noted that, in the deliberations that led to the adoption of draft article 18, it had been understood in the Working Group that the mandatory effects of the recognition would be immediately operative and should not await the provision of notice to creditors and other interested parties under article 18. It had also been the understanding of the Working Group that article 18 concerned only notice of recognition, and not notice of relief granted by the court under article 17, a matter which was entirely left to the procedural rules of the enacting State.

76. The view was expressed that the scope of the notice requirements provided in article 18, which was limited to the recognition of the foreign proceeding, and possibly to the mandatory effects of the recognition, was too narrow. It was suggested that article 18 should also provide guidance to the court as to the content of the notice, for instance by requiring that the notice should specify in detail the effects of the recognition under article 16 in an attempt to establish uniform notice requirements.

77. In response to that suggestion, it was pointed out that national laws varied greatly as to the form, time and purposes of notices that were required to be given in insolvency cases or for the purpose of recognizing foreign proceedings, and that it would not be realistic to attempt to achieve uniformity in that field. It was also noted that the issuance of notices under article 18 might entail additional costs which might not always be warranted by the assets available for the insolvency proceedings. The Commission was urged not to introduce provisions that would unreasonably burden the proceedings. Pursuant to that view, not only should article 18 not be expanded, but it should also be amended for the purpose of authorizing the court to dispense with the notice of recognition when the assets available did not warrant the cost of issuing such notice.

78. Differing views were expressed as to whether article 18 should also require the court to issue notice of an application for recognition. Pursuant to various interventions, the lack of a reference to such notice in article 18 might be construed to the effect that the court was obligated to grant recognition without hearing the debtor or other interested persons, such as local creditors. That situation would raise legal objections in a number of jurisdictions where, due to fundamental principles of due process, in some cases enshrined in constitutional provisions, a decision of the importance of the recognition of a foreign insolvency proceeding could only be made after hearing the affected parties. Also, in view of the fact that not all jurisdictions had legislation on recognition of foreign proceedings, it was important to expressly mention notice of application in article 18 so as to clarify that the hypothesis of that provision was not excluded from the application of general principles on notice requirements.

79. However, strong objections were raised to including a generally applicable duty to issue notice of application for recognition in article 18. It was pointed out that applications for recognition of foreign proceedings required expeditious treatment, as they were often submitted in circumstances of imminent danger of dissipation or concealment of the debtor's assets or serious aggravation of the debtor's financial situation. For that reason, a number of jurisdictions did not require the issuance of notice prior to any court decision on an application for recognition. Imposing that requirement in article 18 would cause undue delay and would be inconsistent with article 13(8), which provided that an application for recognition of a foreign proceeding should be decided upon at the earliest possible time.

80. Furthermore, it was pointed out that the notice of recognition under article 18 was in fact a publicity requirement, so as to apprise potentially interested persons, such as local creditors, that a foreign proceeding had been recognized in the enacting State. That notice was different from, and should not be confused with, individual notifications that the court of the enacting State, under its own procedural rules, had to issue to persons that would be affected by a relief measure granted by the court upon request by the foreign representative, a matter which was referred to the laws of each enacting State pursuant to article 15(2). It was noted that procedural matters were in principle outside the scope of the Model

Provisions and had been largely left to the laws of each enacting State. Therefore, the absence of an express reference to notice of the filing of an application for recognition in article 18 did not preclude the court from issuing such notice, where legally required, in pursuance of its own rules on civil or insolvency proceedings. By the same token, article 18 was not intended to mandate the issuance of such notice, where such requirement did not previously exist. It was suggested that the Guide to Enactment should contain a reference to that effect.

81. In the course of the discussion, it was increasingly felt that, since notice requirements varied greatly under national laws, the Commission should avoid attempting to achieve uniformity in that field. After consideration of the various views expressed, it was agreed that article 18 might lead to difficulties of interpretation and that any notice requirements concerning the recognition should be left to the laws of the enacting State. Accordingly, the Commission decided to delete article 18. The Guide to Enactment should clarify that notice requirements under national law were not affected by the Model Provisions.

Article 19. Protection of creditors and other interested persons

82. The text of the article, as considered by the Commission, was as follows:

"(1) In granting or denying relief under article 15 or 17, and in modifying or terminating relief under this article, the court [shall take into account the interests of the creditors and other interested persons, including the debtor] [must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected].

"(2) The court may subject such relief to conditions it considers appropriate.

"(3) Upon request of a person or entity affected by relief granted under article 15 or 17, [or by the stay or suspension pursuant to article 16(1)], the court may modify or terminate such relief [, stay or suspension] [, taking into account the interests of the creditors and other interested persons, including the debtor]."

Paragraphs (1) and (2)

83. The view was expressed that, as currently drafted, paragraphs (1) and (2) merely restated a general principle that would already be applied in most jurisdictions, namely, that in issuing orders or granting relief measures, a court had to bear in mind the interests of those persons who might be affected by the order or measure and might subject those measures to conditions. In order to link articles 15 and 17 in a clearer way to those principles, it was proposed to replace paragraphs (1) and (2) with the following provision:

"Nothing in this law shall limit the authority of the court to reject, modify, subject to conditions or terminate any relief measure granted under articles 15 or 17 of this law pursuant to, or in conformity with, any other law of this State."

84. The prevailing view, however, was that paragraphs (1) and (2) established a useful framework for the court to exercise its powers under articles 15 and 17 and should be retained. The reference to the interests of creditors, the debtor and other interested parties in paragraph (1) was found to provide concrete elements to guide the court in assessing the impact of relief measures requested to be granted under article 15 or 17. The Commission decided to retain the formulation "must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected".

85. It was proposed to amend paragraph (1) for the purpose of expressly mentioning the protection of the interests of local creditors. The prevailing view, however, was largely that the purpose of article 19 was not to be limited to the protection of local creditors. Besides, an express reference to local creditors in paragraph (1) would require a definition of local creditors, which would be difficult to formulate. Therefore, the proposal was not adopted.

Paragraph (3)

86. Objections were raised with regard to the possibility that the court of the enacting State might modify or terminate the mandatory effects of the recognition of a foreign main proceeding under article 16. It was stated that, to the extent the provision allowed the court to set aside the application of a statutory rule of law, paragraph (3) gave the court a power that was not given to the courts in some legal systems. Such a provision was found to be appropriate only in respect of discretionary relief granted under articles 15 and 17. General or ad hoc exceptions to article 16 should be dealt with within the context of that article. Therefore, it was suggested that the reference to article 16(1) in paragraph (3) should be deleted. Alternatively, if such reference were to be retained, the Commission should amend paragraph (3) to provide specific grounds on which the court could modify or terminate the mandatory effects of recognition under article 16(1). Concerns were expressed that, in the absence of such grounds, some jurisdictions might feel compelled to establish them unilaterally, thus endangering the uniformity that the Model Provisions attempted to achieve.

87. In response it was said that paragraph (2) was intended to provide persons that might be adversely affected by the stay or the suspension under article 16(1) with an opportunity to be heard by the court of the enacting State. Such a safeguard was needed in the Model Provisions, so as to enable the court of the enacting State to deal with hardship situations, particularly in jurisdictions where no rule similar to article 16(1) was in place. Furthermore, in some legal systems where the opening of insolvency proceedings produced the effects listed in article 16(1), the courts were authorized to make individual exceptions upon request by the interested parties, under conditions prescribed by local law.

88. However, in view of the strong objections that had been raised to the current wording of paragraph (3), the Commission considered various proposals to amend paragraph (3) so as to take into account the difficulties that some jurisdictions might experience in the application of that provision as currently drafted. Wide support was expressed to the proposition that paragraph (3) should be limited to modification or termination of relief granted under articles 15 and 17 and that article 16(2) should be amended to provide that the modification or termination of the stay and the suspension provided in article 16(1) was subject to the laws of the enacting State.

89. It was considered that the absence of a reference in paragraph (3) to the power of the court to modify or terminate relief ex officio might create the impression that the courts did not have that power. After discussion, it was agreed that paragraph (3) should also refer to the court's power to modify or terminate relief granted under articles 15 and 17 on its own motion.

90. The Commission noted that, in most cases, relief under articles 15 and 17 would be granted upon request by the foreign representative. However, doubts might arise as to whether the foreign representative could be regarded as being "a person or entity affected by relief granted under article 15 or 17" for the purposes of paragraph (3). In that connection, it was suggested that the foreign representative might, in the interest of the creditors, have a legitimate interest in requesting the modification or termination of relief measures granted under articles 15 and 17. Paragraph (3) should expressly cover such a possibility. The Commission agreed with that proposal and decided to include reference to the foreign representative in paragraph (3).

91. The Commission further considered the question whether paragraph (3) should also refer to the possibility of modification of the court's decision to recognize the foreign proceeding. In support of such a possibility it was stated that the recognition of the foreign proceeding should not be regarded as perennial. The circumstances under which the foreign proceeding was recognized might change, for instance, if the foreign proceeding itself terminated or its nature was changed. Also, new facts might arise which required or justified a change of the court's decision, for instance, if the foreign representative disregarded the terms of the relief under article 17 or committed unlawful acts to the detriment of creditors or other interested parties in the enacting State. Paragraph (3) should empower the court to revisit the decision to recognize the foreign proceeding if the circumstances so required.

92. In response it was pointed out that the decision to recognize a foreign proceeding, as any other decision by the court of the enacting State, would usually be subject to appeal and to other procedures available in the enacting State, under its own procedural rules, for the purpose of revising judicial decisions and judgements. That was not, however, a matter that could be appropriately dealt with within the scope of paragraph (3). After consideration of the different views expressed, it was generally felt that the question of modification or revision of the recognition of the foreign proceeding essentially involved issues of appeal and rescission of judicial decisions which were outside the scope of the Model Provisions. It was decided that the Guide to Enactment should contain an explanation to that effect within the context of article 13, which dealt with the recognition of the foreign proceeding. It was pointed out, in that connection, that some appeal procedures under national laws gave the appeal court the authority to review the merits of the case in its entirety, including factual aspects. It was suggested that the Guide to Enactment should indicate that it would be consistent with the Model Provisions if an appeal of the decision under article 13 would be limited to the question of whether the requirements of articles 13 and 14 had been met by the decision to recognize the foreign proceeding. (However, in its subsequent deliberations on article 13, which are reflected below in paragraphs 199-209 and in particular in paragraph 207, the Commission decided to amend article 13 so as to provide that nothing in that article prevented the modification or termination of recognition under circumstances specified therein.)

93. Subject to the changes mentioned above, the Commission approved the substance of paragraph (3) and referred it to the drafting group.

Article 22. Concurrent proceedings

94. The text of the article, as considered by the Commission, was as follows:

> "(1) Upon recognition of a foreign main proceeding, the courts of this State have jurisdiction to commence a proceeding in this State against the debtor under [identify laws of the enacting State relating to insolvency] only if the debtor has assets in this State, and the effects of that proceeding shall be restricted to the assets of the debtor situated in the territory of this State.
>
> "(2) Recognition of a foreign insolvency proceeding is, for the purposes of commencing a proceeding in this State referred to in paragraph (1) of this article and in the absence of evidence to the contrary, proof that the debtor is insolvent."

Paragraph (1)

95. The Commission considered that the reference in paragraph (1) to a limitation of the jurisdiction of the courts of the enacting State to commence a proceeding against the debtor might lead to difficulties of interpretation, particularly as it implied that the courts commenced the proceedings on their own

motion. It was therefore agreed that it would be preferable to use language along the lines "a proceeding may be commenced ...".

96. The view was expressed that paragraph (1) was inadequate to achieve the purpose for which it had been formulated, namely, to limit the possibility of opening local proceedings after recognition of a foreign main proceeding, since under paragraph (1) the mere presence of assets in a State would be sufficient for the opening of local proceedings. It was thus suggested that the words "an establishment" should be added before the word "assets", and that both words should be placed within square brackets.

97. The prevailing view, however, was that the proposed amendment was excessively restrictive and should not be adopted. In the situation dealt with in paragraph (1), the court of the enacting State should be able to open an insolvency proceeding not only when the debtor had an establishment in the enacting State but also when it had assets in that State. That solution was considered realistic in view of the fact that a number of States currently allowed the opening of insolvency proceedings based on the presence of assets in the State. Furthermore, paragraph (1) also served as an indication that grounds for jurisdiction other than the presence of assets were not sufficient.

98. It was suggested that the limitation of the effects of a local proceeding to the assets of the debtor situated in the territory of the enacting State was too narrow and might, in some cases, limit the scope for a meaningful administration of local insolvency proceedings. The assets of a local establishment of a foreign corporation might not necessarily be all located in the enacting State (e.g. the local establishment might have an operating plant in a foreign jurisdiction). The interests of a local proceeding relating to such a local establishment might be best served if the entirety of the assets related to the local establishment could be administered or realized in those local proceedings, thus maximizing the value of the assets. It was therefore proposed to add the words "and such other property as may be appropriately administered within the proceedings in this State" at the end of paragraph (1).

99. In its deliberations, the Commission noted that the wording of paragraph (1), which provided an objective criterion for limiting the effects of local non-main proceedings, was not intended to impose a division of assets that belonged to one establishment solely on the basis of their territorial location. Moreover, that provision should not be perceived as precluding disposition of the debtor's assets in the enacting State as a going concern. At the same time, it was also felt that, in expanding the notion of "assets" in paragraph (1) to encompass assets other than those situated in the territory of the enacting State, care should be taken to avoid generating uncertainty in the application of that provision. A redrafted version of paragraph (1) should be kept in line with other provisions of the draft Model Provisions, such as article 17(3), in the new wording adopted by the Commission, which gave the court of the enacting State some latitude to determine, in the light of its own laws, which of the assets located in the territory of the enacting State should be administered in the foreign proceeding. Furthermore, it was felt that the concern that the interests of a local proceeding might be best served by a common administration or realization of assets situated both in the enacting State and in a foreign jurisdiction involved questions of coordination and cooperation, as appropriate, between the courts concerned. Therefore, it was considered necessary to make reference to such coordination in a redrafted version of paragraph (1) that incorporated the proposed amendment.

100. Having considered the different views expressed, the Commission agreed that paragraph (1) should be redrafted to provide that, upon recognition of a foreign main proceeding, the effects of a local proceeding in the enacting State should be restricted to the assets of the debtor situated in the territory of that State and, to the extent necessary to implement coordination and cooperation under article 21, to other assets of the debtor that, under the laws of that State, should be administered in such a proceeding.

101. Subject to the above amendments, the Commission approved the substance of paragraph (1) and referred it to the drafting group.

Paragraph (2)

102. Various interventions were made questioning the need for paragraph (2), which established a rebuttable presumption of insolvency of the debtor, for the purposes of commencing an insolvency proceeding in the enacting State, upon recognition of a foreign insolvency proceeding. It was pointed out that proof of insolvency of the debtor was not universally required for the opening of insolvency proceedings, since some legal systems authorized the opening of insolvency proceedings under specific circumstances defined by the law (e.g. cessation of payments) or upon accomplishment by the debtor of certain actions (e.g. dissipation of its assets, abandonment of its establishment). The view was expressed that, for those legal systems, the presumption established by paragraph (2) would be of little practical consequence and might be misunderstood as introducing a new criterion for opening insolvency proceedings. Furthermore, paragraph (2) might cause particular difficulties in the event of recognition of a foreign interim proceeding, as it would not be appropriate to have a presumption of insolvency operating in the enacting State while there was no final adjudication of insolvency in the foreign jurisdiction. The Commission was therefore urged to delete paragraph (2).

103. In response to those views, it was observed that the purpose of paragraph (2) was not to introduce new substantive rules of law in the enacting State, but rather to make it possible for the court to open insolvency proceedings on the basis of a presumption of insolvency, without having first to establish that the debtor was insolvent, where such requirement existed. The words "in the absence of evidence to the contrary" made it clear that the court of the enacting State was not bound by the decision of the foreign court. As such, paragraph (2) was considered to be a useful provision that might help to simplify and expedite the proceedings in the enacting State. However, in view of the strong reservations that had been expressed to paragraph (2), it was agreed that the Guide to Enactment should indicate that the presumption established in paragraph (2) might not have practical significance in all States and that, in jurisdictions where proof of insolvency of the debtor was not required for the opening of insolvency proceedings, the enacting State might wish not to enact that provision.

104. The Commission proceeded to consider whether paragraph (2) should apply equally in the event of recognition of foreign main and non-main proceedings. The prevailing view was that it would not be appropriate to presume the insolvency of the debtor in the State where the debtor had the centre of its main interests solely on the basis of the opening of non-main proceedings in a foreign jurisdiction and that, therefore, paragraph (2) should be limited to the recognition of a foreign main proceeding.

105. The Commission approved the substance of paragraph (2), as amended, and referred it to the drafting group.

New paragraph (3)

106. The Commission also considered a proposal for adding a new paragraph (3) to article 22, along the following lines:

> "(3) Where a foreign proceeding and a proceeding in this State under [identify laws of the enacting State relating to insolvency] are taking place concurrently regarding the same debtor, the court shall seek to achieve cooperation and coordination under article 21, subject to the following:

"(a) if the proceeding under [identify laws of the enacting State relating to insolvency] is taking place at the time the application for recognition of the foreign proceeding is filed, article 16 does not apply and any relief under article 15 or 17 must be consistent with the conduct of the proceeding under [identify laws of the enacting State relating to insolvency];

"(b) if the proceeding under [identify laws of the enacting State relating to insolvency] commences after the filing of the application for recognition of the foreign proceeding, any relief in effect under articles 15, 16 or 17 shall be reviewed by the court and shall be modified or terminated if inconsistent with the conduct of the proceeding under [identify laws of the enacting State relating to insolvency];

"(c) in granting, continuing or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets falling under the authority of the foreign representative or concerns information required in that foreign non-main proceeding."

107. It was pointed out that the proposed new paragraph (3)(a) established the principle of the precedence of the prior local proceeding over the foreign proceeding for which recognition was sought after the local proceeding had already been opened. On the other hand, the proposed new paragraph (3)(b) established the principle of precedence of the prior foreign proceeding over a local proceeding that was commenced after the recognition of the foreign proceeding. However, it was suggested that, for the sake of completeness, the Model Provisions should also establish a hierarchy of proceedings in favour of a local main proceeding, which should preclude any relief measure affecting the debtor's assets in the enacting State.

108. In response to that view it was stated that, while giving a certain pre-eminence to the local proceeding, the Model Provisions should avoid establishing a rigid hierarchy between proceedings that might unnecessarily hinder the ability of the court to cooperate by way of exercising their discretion under articles 15 and 17. It was noted that articles 16(1) and 17(3), as well as the proposed new paragraph (3)(c), already distinguished between foreign main and non-main proceedings for the purposes of the effects of recognition and the relief available to the foreign representative. Similarly, paragraph (1) limited the scope of local proceedings after recognition of a foreign main proceeding. In the circumstances, it was generally felt that, when read in conjunction with other provisions of the draft Model Provisions, the proposed new paragraphs (3)(a) and (3)(b) adequately covered the main issues raised by concurrent proceedings.

109. The view was expressed that the proposed new paragraph (3) should also provide a solution for possible conflicts between the decisions of the court of the enacting State and decisions of the foreign court that might arise in the context of concurrent proceedings. It was suggested that the proposed new paragraph (3) should provide that such possible conflicts should be solved in the course of a possible appeal of the recognition under article 13 in a manner that limited the effects of the recognition of the foreign proceeding to the assets which, under the laws of the enacting State, should be administered in that proceeding. That suggestion, too, was found to be excessively restrictive within the context of article 22 and did not attract sufficient support. It was, however, generally agreed that the Commission should examine the implications of possible conflicts between concurrent proceedings when it considered article 13 (see paragraphs 199-209 below).

110. After considering the views expressed on the proposed new paragraph (3), and following discussion of several proposals for improving its current formulation and presentation, the Commission approved the substance of the new draft paragraph (3) and referred it to the drafting group.

New paragraph (4)

111. The Commission also considered a proposal for adding a new paragraph (4) to article 22, along the following lines:

"(4) In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek to achieve cooperation and coordination under article 21, subject to the following:

"(a) after recognition of a foreign main proceeding any relief [granted] [to be granted] to a representative of a foreign non-main proceeding under article 15 or 17 must be consistent with the conduct of the foreign main proceeding;

"(b) if a foreign main proceeding is recognized after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under article 15 or 17 shall be reviewed by the court and shall be modified or terminated if inconsistent with the conduct of the foreign main proceeding;

"(c) after recognition of a foreign non-main proceeding, upon recognition of a subsequent foreign non-main proceeding, the court shall grant, modify or terminate relief to facilitate coordination of the proceedings."

112. The Commission generally approved the substance of the proposed new paragraph (4) and, following discussion of a few proposals for improving its current formulation and presentation, the Commission referred it to the drafting group.

New paragraph (5)

113. The Commission also considered a proposal for adding a new paragraph (5) to article 22, along the following lines:

"(5) From the time of filing an application for recognition of a foreign proceeding, the foreign representative shall inform the court promptly of all foreign proceedings in respect of the debtor which are known to the foreign representative."

114. It was suggested that, in addition to the information envisaged in the proposed new paragraph (5), provision should be made to require the foreign representative to inform the court of the status of his or her appointment (in particular of the termination of the appointment) or of the status of the foreign proceeding (in particular of its termination or its transformation from a liquidation proceeding into a reorganization proceeding). It was said that giving such information to the court might be important in all circumstances, but was particularly important when the foreign proceeding had been opened on an interim basis or the foreign representative had been appointed provisionally.

115. For that purpose, it was suggested that one possible approach to providing such a duty might be to introduce a new subparagraph in article 13 requiring the foreign representative to submit an undertaking to inform the court of any change in the status of the foreign proceeding or of his or her appointment. The Commission decided to consider that proposal within the context of its deliberations on article 13 (see paragraph 207 below).

116. Subject to the above deliberations, the Commission approved the substance of paragraph (5) and referred it to the drafting group.

Article 20. Intervention by a foreign representative in actions in this State

117. The text of the article, as considered by the Commission, was as follows:

> "Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of this State are met, intervene in [individual actions] [proceedings] in which the debtor is a [claimant or defendant] [party]."

118. The Commission noted that the purpose of draft article 20 was to give the foreign representative standing to appear in court and to make representations in proceedings, whether individual court actions or other proceedings (including extrajudicial proceedings) instituted by the debtor against a third party, or by a third party against the debtor, and which had not been stayed under article 16(1) or 17.

119. It was suggested that the right to intervene should be available only to the representative of a foreign main proceeding. The prevailing view, however, was that also the representative of a foreign non-main proceeding could have a legitimate interest in the outcome of a dispute between the debtor and a third party and that the provision should not exclude that possibility.

120. The concern was expressed that, as currently drafted, draft article 20 permitted the foreign representative to intervene in any proceedings in which the debtor was a party, which might include proceedings concerning the personal affairs of the debtor (e.g. actions in family law matters). That result was found to be undesirable, and, in that connection, it was suggested that the foreign representative's right to intervene should be restricted to proceedings concerning the debtor's assets. Additionally, it was suggested that article 20 should expressly provide that intervention by the foreign representative should be subject to the provisions of the laws of the enacting State governing third party intervention in judicial proceedings.

121. In response to that suggestion it was observed that in legal systems that recognized insolvency proceedings of natural persons, such as individual traders or merchants, it would sometimes be difficult to establish a clear distinction between the debtor's business and personal affairs, and that proceedings apparently falling in the latter category might well have influence on the debtor's assets and liabilities. In those situations, the foreign representative might have a legitimate interest to intervene in such proceedings. It was therefore generally felt that the Commission should not attempt to circumscribe the scope of the intervention under draft article 20, so as to avoid creating an unnecessary and undesirable limitation of the foreign representative's ability to intervene in those proceedings. In most jurisdictions where it was possible for a party to intervene in a dispute between two other parties, national procedural law contemplated requirements to be met by such intervening party so as to be permitted by the court deciding the dispute to be heard in the proceedings (e.g. legal interest in the outcome of the dispute). Such requirements were generally recognized by article 20. However, an express reference in article 20 to the specific requirements to be met under the laws of the enacting State was found to be unnecessary and difficult to formulate, given that in many jurisdictions they might be scattered in various legal texts or result from case law and might vary according to the nature of the proceeding.

122. As regards the bracketed language in article 20, there was general preference for retaining the words "proceedings" and "party" and deleting the remaining bracketed language.

123. After deliberations, the Commission approved the substance of article 20 and referred it to the drafting group.

Article 21. Authorization of cooperation and direct communication with foreign courts and foreign representatives

124. The text of the article, as considered by the Commission, was as follows:

"(1) In matters referred to in article 1, a court referred to in article 4 shall cooperate to the maximum extent possible with foreign courts, either directly or through a [insert the title of the person or body administering a liquidation or reorganization under the law of the enacting State] or a foreign representative. The court is permitted to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

"(2) In matters referred to in article 1, a [insert the title of the person or body administering a liquidation or reorganization under the law of the enacting State] shall, in the exercise of its functions and [subject to the supervision] [without prejudice to the supervisory functions] of the court, cooperate to the maximum extent possible with foreign courts and foreign representatives. The [insert the title of the person or body administering a liquidation or reorganization under the law of the enacting State] is permitted, in the exercise of its functions and [subject to the supervision] [without prejudice to the supervisory functions] of the court, to communicate directly with foreign courts or foreign representatives.

"(3) Cooperation may be implemented by any appropriate means, including:

"(a) appointment of a person or body to act at the direction of the court;

"(b) communication of information by any means deemed appropriate by the court;

"(c) coordination of the administration and supervision of the debtor's assets and affairs;

"(d) approval or implementation by courts of agreements concerning the coordination of proceedings;

"(e) [coordination of multiple proceedings regarding the same debtor] [coordination of main or non-main foreign proceedings and a proceeding in this State under [identify laws of the enacting State relating to insolvency] in respect of the same debtor;

"(f) [the enacting State may wish to list additional forms or examples of cooperation]."

125. General support was expressed for the substance of article 21. A view was also expressed that matters pertaining to judicial cooperation in general, including cooperation in insolvency matters, were more suitable for being addressed in bilateral or multilateral treaties, which typically provided for cooperation based on reciprocity. For some States it was doubtful whether a workable framework for judicial cooperation could be established exclusively by way of a national statute, in particular since it was difficult to incorporate in it the concept of reciprocity. However, it was generally agreed that that view should not be understood as questioning the usefulness of the Model Provisions for the purposes of promoting the objectives of greater judicial cooperation in insolvency matters.

126. With regard to paragraph (2), the words "subject to the supervision" were preferred to the words "without prejudice to the supervisory functions".

127. In respect of paragraph (3)(a), the view was expressed that the words "at the direction of the court" might not be appropriate in all circumstances, since some cases might be best served by giving the appointed person ample authority to cooperate with the foreign court or representative. That view did not attract sufficient support.

128. With regard to paragraph (3)(e), it was agreed to retain the language in the first set of brackets and delete the remaining bracketed language.

129. Having discussed a few proposals to improve the wording of article 21, including the deletion of the words "authorization of" from its title, the Commission approved its substance and referred it to the drafting group.

Article 23. Rate of payment of creditors

130. The text of the article, as discussed by the Commission, was as follows:

> "Without prejudice to [secured claims] [rights in rem], a creditor who has received part payment in respect of its claim in an insolvency proceeding commenced in another State may not receive a payment for the same claim in a proceeding commenced in this State under [identify laws of the enacting State relating to insolvency] with regard to the same debtor in this State, so long as the payment to the other creditors of the same class for their claims in the proceeding commenced in this State is proportionately less than the payment the creditor has already received."

131. The Commission noted that the purpose of draft article 23 was to avoid situations in which a creditor might obtain a more favourable treatment than the other creditors of the same class by obtaining payment of its claim in more than one proceeding being simultaneously conducted in different jurisdictions in respect of the same debtor.

132. Proposals were made to replace the words "secured claims" and "rights in rem", with reference to "privileged claims", "preferred claims" or other expressions with a similar meaning. In response it was noted that, as provided in draft article 11(2), the Model Provisions did not affect the ranking of claims pursuant to the laws of the enacting State and that article 23 was solely intended to establish the equal treatment of creditors of the same class. However, to the extent secured creditors or creditors with rights in rem were paid in full regardless of the ranking of their claims (a matter that depended on the insolvency law of the State where the proceedings were conducted), those creditors should be excluded from the scope of application of draft article 23.

133. The Commission discussed the meaning of the expressions "secured claims" and "rights in rem". It was explained that the first referred to claims guaranteed by particular assets and the second to rights relating to a particular property and enforceable against third parties. A given right might fall within the ambit of both expressions, but not necessarily so, depending on the classification and terminology of the applicable law. It was noted that different legal systems might prefer to use other terms of art for expressing those concepts. For clarity purposes, it was agreed that both expressions should be retained in article 23.

134. Following discussion of a few proposals for improving its current formulation, the Commission approved the substance of draft article 23 and referred it to the drafting group.

Preamble

135. The text of the preamble, as considered by the Commission, was as follows:

"The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

"(a) cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

"(b) greater legal certainty for trade and investment;

"(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

"(d) protection and maximization of the value of the debtor's assets; and

"(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment."

136. The Commission noted that the purpose of the preamble was to give a succinct statement of the basic policy objectives of the Model Provisions, rather than to create substantive rights. It was observed that, in States where it was not customary to set out preambular statements of policy in legislation, consideration might be given to including the statement of objectives either in the body of the statute or in a separate document, so as to preserve a useful tool for the interpretation of the law.

137. A proposal was made to delete the words "thereby protecting investment and preserving employment" in subparagraph (e). It was stated that those words did not belong in the preamble of a text that did not contain any provision directly concerned with protecting investment or preserving employment. It was pointed out that the basic objective of the Model Provisions was to facilitate the conduct of insolvency proceedings with cross-border elements. However desirable, the rescue of a financially troubled business might not always be a viable solution, and many insolvency proceedings might inevitably lead to the liquidation of that business. Furthermore, the interests of creditors, referred to in subparagraph (c), might not always be compatible with protecting investment and preserving employment.

138. In response to that proposal, which was not adopted by the Commission, it was observed that an objective such as the one mentioned in subparagraph (e) was in line with a number of national insolvency laws. The preamble to the draft Model Provisions contained a statement of basic policy objectives and not of mandatory objectives. It would be incorrect to regard those objectives as being contradictory only because, in individual cases, some of them might take precedence over the others. Besides, while liquidation of the business was often the inevitable outcome of insolvency proceedings, many proceedings were concluded with a successful reorganization of the business. With regard in particular to subparagraph (e), it was noted that the protection of investment and the preservation of employment were not independent objectives, but rather expected consequences from the rescue of financially troubled businesses. The latter objective was pursued by many national laws on insolvency proceedings and deserved being mentioned in the preamble to the Model Provisions.

139. Subject to the above deliberations, the Commission approved the substance of the preamble and referred it to the drafting group.

Article 1. Scope of application

140. The text of the article, as considered by the Commission, was as follows:

"(1) This [Law] [Section] applies where:

"(a) assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or

"(b) assistance is sought in a foreign State in connection with a proceeding in this State under [identify laws of the enacting State relating to insolvency]; or

"(c) a foreign proceeding and a proceeding in this State under [identify laws of the enacting State relating to insolvency] in respect of the same debtor are taking place concurrently; or

"(d) creditors or other interested parties in a foreign State have an interest in requesting the commencement of or participating in a proceeding in this State under [identify laws of the enacting State relating to insolvency].

"(2) This [Law] [Section] does not apply where the debtor is a [insert the designations of specially regulated financial services institutions such as banks and insurance companies], if the debtor's insolvency in this State is subject to special regulation."

Paragraph (1)

141. The Commission considered at length the question whether article 1 should be amended for the purpose of expressly excluding proceedings concerning consumers from the scope of application of the Model Provisions.

142. Various interventions were made in support of such an exclusion. It was stated that a number of jurisdictions had special legislation on consumer protection. For those jurisdictions, it was important to avoid the impression that the Model Provisions intended to extend to consumers the same insolvency regime that applied to companies and traders. Issues of consumer protection might reduce the willingness of those States to enact the Model Provisions. The proposed exclusion was further needed as not all legal systems recognized insolvencies of individuals other than traders, and even in those jurisdictions where insolvency proceedings could be opened in respect of an individual, such insolvency would often be conducted under a special regime, particularly in jurisdictions that distinguished between civil and commercial activities. Besides, in the absence of an explicit exclusion, the courts of those States that did not provide consumer insolvencies might exclude them by invoking the public policy exception, which might lead to excessive use, and an excessively broad interpretation, of the public policy exception. For the purpose of effecting the proposed exclusion, it was suggested to amend article 1 so as to provide that if a debtor's debts were incurred predominantly for personal, family or household purposes, rather than for business purposes, a proceeding regarding that debtor was excluded from the ambit of the Model Provisions. Alternatively, it was suggested to provide in a footnote to article 1 that the enacting State had the option to exclude proceedings concerning consumers from the scope of application of the Model Provisions.

143. That proposal raised strong objections. It was noted that, in its consideration of the draft Model Provisions, the Commission was mindful of the need for uniformity in the field of cross-border insolvency and therefore had avoided making use of footnotes or options that would allow for departures from the uniform text. It was also noted that a number of jurisdictions did not enquire as to the nature of the debtor's debts for insolvency purposes, nor did they exclude consumers or other individuals from the ordinary insolvency regime. The proposed exclusion might be construed as a recommendation for those jurisdictions to consider introducing new categories of insolvency proceedings into their national laws. Besides, the notion of debts incurred for "family purposes" was found to be unclear and susceptible to misuse by unscrupulous debtors.

144. In response to those objections it was noted that the work of the Commission had been essentially focused on trade law issues and that consumer transactions had been expressly excluded in a number of texts previously adopted by the Commission, such as the United Nations Convention on Contracts for the International Sale of Goods[11] and the UNCITRAL Model Law on Electronic Commerce.[12]

145. After considering the various views expressed, it was agreed that the text of paragraph (1) should be retained and that the Guide to Enactment should indicate that, in those jurisdictions that did not recognize consumer insolvencies or where the insolvency of non-traders did not fall under the same insolvency regime that applied to corporations and traders, the enacting State might wish to exclude from the scope of application of the Model Provisions those insolvencies that related to natural persons residing in the enacting State whose debts were incurred predominantly for personal or household purposes, rather than for commercial or business purposes, or to non-traders. The Guide to Enactment should also suggest that the enacting State might wish to provide that such exclusion would not apply in cases where the total debts exceeded a certain monetary ceiling.

Paragraph (2)

146. As a general comment, it was noted that paragraph (2) appeared to impose the exclusion of the entities mentioned therein from the ambit of the Model Provisions. It was pointed out, however, that the enacting State might wish that insolvency proceedings opened in its territory, although conducted under a special regulatory regime, would nevertheless be accorded recognition abroad. A view was also expressed that a possible approach in national law might be to treat the foreign insolvency proceedings involving a credit institution as an ordinary insolvency proceeding for recognition purposes if the branch or activity of the foreign credit institution in the enacting State did not fall under the national regulatory scheme. It was suggested that the Guide to Enactment should mention that possible approach. However, that suggestion was not adopted.

147. The Commission proceeded to discuss whether the scope of the exclusion under paragraph (2), which currently referred only to financial services institutions, should be expanded so as to encompass entities other than financial services institutions. In favour of such an expansion it was indicated that national laws sometimes provided special insolvency regimes for other types of enterprises, such as public utility companies, or excluded those enterprises from the scope of application of their insolvency laws. It was suggested that, without such an exclusion, some enacting States might be inclined to make use of the public policy exception provided in article 6. With a view to discouraging wide resort to public policy exceptions, exclusions under paragraph (2) would best be left to national law.

148. In reply to that proposal it was observed that the draft Model Provisions had been formulated so as to apply to any proceeding that met the requirements of article 2(a), independently of the nature of the debtor or its particular status under national law. The only exceptions were those contemplated in paragraph (2), which was purposely limited to financial services institutions. That exclusion was largely

acceptable because insolvencies of financial services institutions usually required prompt and discrete action (for instance to avoid massive withdrawals of deposits) and were, for that reason, administered under special regulatory regimes in various States. The Commission was therefore urged not to expand the scope for exclusions under paragraph (2).

149. Upon consideration of the various views expressed, it was agreed that it would be preferable to allow for exclusions under paragraph (2) rather than to encourage enacting States to make use of public policy exceptions. It was therefore decided that the words "financial services institutions" should be deleted from paragraph (2). However, with a view to making the Model Provisions more transparent (for the benefit of foreign users of the law based on the Model Provisions), it was considered that all exclusions from the scope of the Model Provisions should be expressly mentioned by the enacting State in paragraph (2).

150. Subject to the amendments mentioned above, the Commission approved the substance of paragraph (2) and referred it to the drafting group.

Article 2. Definitions

151. The text of the article, as considered by the Commission, was as follows:

"For the purposes of this Law:

"(a) 'foreign proceeding' means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency in a foreign State in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

"(b) 'foreign main proceeding' means a proceeding taking place in the State where the debtor has the centre of its main interests;

"(c) 'foreign non-main proceeding' means a proceeding taking place in the State where the debtor has an establishment within the meaning of subparagraph (f) of this article;

"(d) 'foreign representative' means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

"(e) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(f) 'establishment' means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods."

Subparagraphs (a) to (c)

152. It was decided that the word "foreign" should be added in subparagraphs (b) and (c) before the word "proceeding" to make it clear that reference was made to the definition of "foreign proceeding" contained in subparagraph (a). It was also decided to clarify in subparagraph (c) that a "foreign non-main proceeding" was a foreign proceeding "other than a foreign main proceeding" that took place in a State where the debtor had an establishment.

153. The view was expressed that the meaning of the term "centre of main interests" in subparagraph (b) was not clear and that its use would create uncertainty. In response, it was stated that that term was used in the European Union Convention on Insolvency Proceedings and that the interpretation of the term in the context of that Convention would be useful also in the context of the Model Provisions.

154. The suggestion was made that "foreign non-main proceeding" in subparagraph (c) should also be a proceeding opened in the respective foreign State on the ground that the debtor had assets, but not an establishment, in that State. The Commission, however, decided that a foreign non-main proceeding susceptible to recognition under article 13(3)(b) should only be a proceeding commenced in a State where the debtor had an establishment in the meaning of article 2(f). It was considered that that decision should not affect the decision taken in the context of article 22(1), namely, that an insolvency proceeding could be opened in the enacting State on the ground that the debtor had assets in the State. It was noted that the effects of an insolvency proceeding opened on the basis of the presence of assets in the State were, according to article 22(1), normally restricted to the assets located in that State; if other debtor's assets located abroad should, under the law of the enacting State, be administered in that insolvency proceeding, that cross-border issue was to be dealt with as a matter of international cooperation and coordination under article 21.

155. Subject to the drafting changes decided on, the Commission adopted the substance of sub-paragraphs (a) to (c).

Subparagraphs (d) and (e)

156. The suggestion was made that the words "or to act as a representative of the foreign proceeding" contained in subparagraph (d) should be deleted. The Commission, however, decided to retain the current text since acting abroad as a representative of the insolvency proceeding might be the main purpose of the appointment.

157. In response to a question raised as to the purpose of including in the definition of "foreign court" non-judicial authorities, it was said that a foreign proceeding that met the requisites of article 2(a) should be recognized even if it was opened by a non-judicial authority; as a drafting matter, the definition of the foreign court included non-judicial authorities in order to obviate the need to refer to a foreign authority other than a court whenever reference was made to a foreign court. It was pointed out that subparagraph (e) followed a similar definition adopted in article 2(d) of the European Union Convention on Insolvency Proceedings. The Commission adopted subparagraph (e) unchanged.

Subparagraph (f)

158. It was decided to add, at the end of subparagraph (f), the words "or services". It was noted that, except for the added words, the definition was closely modelled on the definition of "establishment" in article 2(g) of the European Union Convention on Insolvency Proceedings. Subject to that addition, the Commission adopted subparagraph (f).

Article 3. International obligations of this State

159. The text of the article, as considered by the Commission, was as follows:

> "To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail."

160. The Commission agreed with the principle embodied in article 3.

161. It was observed that, while in some States binding international treaties were self-executing, in other States international treaties were, with certain exceptions, not self-executing in that they required internal legislation for them to become enforceable law. With respect to the latter group of States, it was noted that, in view of their normal practice in dealing with international treaties and agreements, it would be inappropriate or unnecessary to include article 3 in their legislation or it might be appropriate for certain States to include it in modified form. It was agreed that the Guide to Enactment should reflect that situation.

162. The Commission considered a suggestion that, in order to avoid an unnecessarily broad interpretation of international treaties, article 3 should emphasize that a treaty displaced a Model Provision only when the treaty regulated the subject matter of the provision in question. In support of the suggestion, it was stated that in its current formulation article 3 might inadvertently result in giving precedence to an international treaty that was drafted broadly and dealt with some matters addressed by the Model Provisions in an indirect way (e.g. matters such as access to courts and cooperation between courts or administrative authorities). Such a result, it was said, would reduce certainty and predictability in the application of the Model Provisions and would compromise its goal to achieve uniformity and to facilitate cross-border cooperation in cross-border insolvency. That suggestion was not met with sufficient support. It was pointed out that no additional wording was necessary since a conflict between the Model Provisions and a treaty could arise under article 3 only when the two texts regulated the same subject matter. In addition, it was stated that additional wording such as the one proposed might raise interpretation problems. The Commission adopted article 3 unchanged. It was agreed that the Guide to Enactment should reflect that understanding.

Article 4. Competent authority

163. The text of the article, as considered by the Commission, was as follows:

> "The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by [specify the court, courts or authority competent to perform those functions in the enacting State].
>
> ---
>
> [Footnote to the title of article 4:] "A State where certain functions relating to insolvency proceedings have been conferred upon government-appointed officials or bodies might wish to include in article 4 or elsewhere in chapter I the following provision:
>
> "Nothing in this Law affects the provisions in force in this State governing the authority of [insert the designation of the government-appointed person or body]."

164. It was noted that the competence for the various judicial functions dealt with in the Model Provisions might lie with different courts in the enacting State, and that the enacting State would designate specific courts according to its own system of court competence. The value of article 4, as enacted in a given State, would be to increase the transparency and ease of use of the insolvency legislation for the benefit of, in particular, foreign representatives and foreign courts.

165. For clarity purposes, it was decided that the title of article 4 should read "[Competent court or authority]".

166. With the above amendment, the Commission approved the substance of article 4 and referred it to the drafting group.

Article 5. Authorization of [insert the title of the person or body administering a liquidation or reorganization under the law of the enacting State] to act in a foreign State

167. The text of the article, as considered by the Commission, was as follows:

> "A [insert the title of the person or body administering a liquidation or reorganization under the law of the enacting State] is authorized to act in a foreign State on behalf of a proceeding in this State under [identify laws of the enacting State relating to insolvency], as permitted by the applicable foreign law."

168. The Commission noted that the intent of article 5 was to equip administrators or other authorities appointed in insolvency proceedings commenced in the enacting State to act abroad as foreign representatives of those proceedings. The lack of such authorization in some States has proved to be an obstacle to effective international cooperation in cross-border cases.

169. The Commission approved the substance of article 5 and referred it to the drafting group.

Article 6. Public policy exceptions

170. The text of the article, as considered by the Commission, was as follows:

> "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State."

171. It was observed that the notion of public policy was grounded in national law and might differ from State to State. The term "public policy" was understood differently in national laws; in some legal systems it was understood broadly in the sense that it might relate to any imperative rule of national law while in other legal systems it related solely to the core of fundamental provisions of law. In some of those legal systems there was a dichotomy between the notion of public policy as it applied to domestic affairs, and the notion of public policy that was used in private international law matters. In the latter situation, the exception of public policy was construed as relating to fundamental principles of law, in particular the constitutional guarantees and individual rights, and was only used to refuse the application of foreign law, or the recognition of a foreign judgement or arbitral award, when that would contravene those fundamental principles. It was noted, for example, that, if the courts applied their broad "domestic" notion of public policy to the recognition of foreign judicial decisions, very few foreign decisions would ever be recognized since most foreign proceedings would, in one or the other aspect, depart from procedures which, internally, constituted matters governed by imperative rules. The prevailing view within the Commission was that article 6 should use the notion of public policy in a restrictive sense so that it would only be invoked in rare cases and that, with a view to achieving the objectives of the Model Provisions, it was desirable to avoid giving a broad interpretation to the notion of public policy.

172. It was suggested that the word "manifestly", used as the qualifier of "public policy", should be deleted since it was not clear what it meant. It was said that, in the context of international insolvency, it was inappropriate to restrict the operation of public policy only to cases where the violation of it was

manifest. The prevailing view, however, was that the qualifier should be kept in order to facilitate international cooperation and to avoid a situation where cooperation under the Model Provisions would be frustrated because the particular step or measure was seen to be contrary to a mere technicality of a mandatory nature. Furthermore, it was observed that the word was used in many international legal texts and that its objective and meaning were well understood: its purpose was to emphasize that public policy exceptions should be interpreted restrictively and that article 6 was only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State.

173. Subject to the above deliberations, the Commission approved the substance of article 6 and referred it to the drafting group.

Additional provisions to chapter I (articles 1-6)

174. A proposal was made to add to chapter I (articles 1-6) of the draft Model Provisions an article similar to article 3(1) of the UNCITRAL Model Law on Electronic Commerce to the effect that, in the interpretation of the Model Provisions, regard was to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith. The Commission accepted that proposal and referred the matter to the drafting group.

175. Another proposal was made to add to chapter I of the draft Model Provisions an article to the effect that nothing in the Model Provisions limited the power of the court to provide greater assistance to a foreign representative under any other laws of the enacting State. The Commission approved that proposal and referred it to the drafting group.

Article 7. Right of direct access

176. The text of the article, as considered by the Commission, was as follows:

"A foreign representative is entitled to apply directly to a court in this State.

177. The Commission noted that article 7 was limited to expressing the principle of direct access by the foreign representative to courts of the enacting State, thus freeing the representative from having to meet formal requirements such as licences or consular actions.

178. The Commission approved the substance of article 7 and referred it to the drafting group.

Article 8. Limited jurisdiction

179. The text of the article, as considered by the Commission, was as follows:

"The sole fact that an application pursuant to this Law is made to a court in this State by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application."

180. The Commission noted that the provision was a useful "safe conduct" rule aimed at ensuring that the court in the enacting State would not assume jurisdiction over the entire debtor's assets on the sole ground of the foreign representative having made an application for recognition of a foreign proceeding. It was pointed out that concerns of foreign representatives or creditors about the possibility of all-embracing jurisdiction triggered by an application for relief had, in practice, caused considerable

difficulties in cross-border insolvency. It was noted that the article might not appear necessary in States where the rules on jurisdiction did not allow a court to assume jurisdiction over a person making an application to the court on the sole ground of the applicant's appearance; however, also in those States, the enactment of the article was useful in that it assured foreign representatives that the court of the enacting State would not assume jurisdiction on the sole ground that the foreign representative filed an application with the court.

181. The Commission further noted that the limitation on jurisdiction over the foreign representative embodied in article 8 was not absolute and was only intended to shield the foreign representative to the extent necessary to make court access a meaningful proposition. Other possible grounds for jurisdiction under the laws of the enacting State, such as the possible misconduct and the resulting liability of the foreign representative, were not affected by article 8.

182. The Commission approved the substance of article 8 and referred it to the drafting group.

Article 9. Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]

183. The text of the article, as considered by the Commission, was as follows:

> "[Upon recognition,] a foreign representative may apply to commence a proceeding in this State under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding under the law of this State are otherwise met."

184. It was noted that national laws, in enumerating persons who may apply to commence an insolvency proceeding, often did not mention a representative of a foreign insolvency proceeding. As a result, questions might arise as to whether the foreign representative had standing for making the application. Article 9 answered those questions by ensuring that the foreign representative had standing for requesting the opening of an insolvency proceeding.

185. The Commission considered the question whether the foreign representative could apply to commence an insolvency proceeding prior to recognition. The prevailing view was in favour of giving the foreign representative that right without requiring prior recognition. It was pointed out that such a possibility might be crucial in cases of urgent need for preserving the assets of the debtor. It was further noted that article 9 already provided sufficient guarantees against abusive applications by requiring that the conditions for commencing such a proceeding under the law of the enacting State had to be met.

186. Interventions were made to suggest that the right to request the opening of insolvency proceedings should not be extended to a representative in a foreign non-main proceeding. It was pointed out that the opening of a proceeding might interfere with the administration of the main proceeding and that, in the interest of enhancing the coordination of insolvency proceedings, only a representative of a foreign main proceeding should be granted that right. However, pursuant to another view, which eventually prevailed, the proposed limitation should not be introduced, as it would render the article excessively rigid. In support of retaining the current wording, it was noted that a representative in a non-main proceeding might have a legitimate interest in requesting the opening of a proceeding in the enacting State, for instance, where no main proceeding within the meaning of the Model Provisions had been opened.

187. Subject to the deliberations above, the Commission approved the substance of article 9 and referred it to the drafting group.

Article 10. Participation of a foreign representative in a proceeding under [identify laws of the enacting State relating to insolvency]

188. The text of the article, as considered by the Commission, was as follows:

"Upon recognition of a foreign proceeding, the foreign representative may participate in a proceeding concerning the debtor in this State under [identify laws of the enacting State relating to insolvency]."

189. The Commission approved the substance of article 10 and referred it to the drafting group.

Article 11. Access of foreign creditors to a proceeding under [identify laws of the enacting State relating to insolvency]

190. The text of the article, as considered by the Commission, was as follows:

"(1) Subject to paragraph (2) of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding in this State under [identify laws of the enacting State relating to insolvency] as creditors in this State.

"(2) Paragraph (1) of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency], except that the claims of foreign creditors shall not be ranked lower than [identify the class of unsecured non-preference claims, while providing that a foreign claim is to be ranked lower than the unsecured non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the unsecured non-preference claims].[b]

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[b] "The enacting State may wish to consider the following alternative wording to replace article 11(2):

"(2) Paragraph (1) of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency] and the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [identify the class of unsecured non-preference claims, while providing that a foreign claim is to be ranked lower than the unsecured non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the unsecured non-preference claims]."

191. It was noted that the purpose of draft article 11 was generally to establish the equality of treatment between foreign and local creditors. Paragraph (2) made it clear that the principle of non-discrimination embodied in paragraph (1) did not affect the provisions on the ranking of claims in insolvency proceedings, including any provisions that might assign a special ranking to claims of foreign creditors; paragraph (2), however, provided a minimum ranking for claims of foreign creditors. The alternative provision in the footnote differed from the provision in the text only in that it allowed discrimination against foreign tax and social security claims.

192. The Commission approved the substance of article 11 and referred it to the drafting group.

Article 12. Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]

193. The text of the article, as considered by the Commission, was as follows:

"(1) Whenever under [identify laws of the enacting State relating to insolvency] notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have an address in this State. [The court may order that appropriate steps be taken with a view to notifying any creditors whose address is not yet known.]

"(2) Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate.

"(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

"(a) indicate a reasonable time period for filing claims and specify the place for filing of claims;

"(b) indicate whether secured creditors need to file their secured claims; and

"(c) contain any other information required to be included in notifications to creditors pursuant to the law of this State and the orders of the court."

194. The Commission noted that the main purpose of notifying foreign creditors as provided in paragraph (1) was to inform them of the commencement of the insolvency proceeding and of the time-limit to file their claims. Furthermore, as a corollary to the principle of equal treatment established by draft article 11, draft article 12 required that foreign creditors should be notified whenever notification was required for creditors in the enacting State.

195. With regard to the form of the notification, it was pointed out that many States provided special procedures for notifications that had to be served in a foreign jurisdiction (e.g. letters rogatory). Those procedures were often cumbersome and time-consuming and their use would not ensure that foreign creditors received timely notice concerning insolvency proceedings in the enacting State. It was therefore suggested that article 12 should be amended to provide that the notification provided therein could be effected by mail or any other means that the court deemed to be adequate in the circumstances.

196. In reply to that proposal, it was pointed out that the form of notification varied in different jurisdictions and that it would be preferable to leave that question entirely to the laws of the enacting State. Furthermore, a number of States were parties to bilateral or multilateral treaties and conventions on judiciary cooperation, such as the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,[13] adopted under the auspices of the Hague Conference on Private International Law, which provided simplified procedures for the communication of court orders and notifications among the signatory States. It was felt that the proposed amendment, which prescribed one particular form of notification (i.e. postal notification) might be inconsistent with the international obligations of those States, which would then be compelled to invoke article 3 to refuse to apply such a new provision.

197. The prevailing view, however, was that the proposed amendment would not generate conflict with the international obligations of the enacting State, since the treaties and conventions that had been alluded to normally did not preclude the State to use simplified notification procedures in the circumstances dealt with in the article. It was agreed that in paragraph (2) words along the following lines should be added: "no letters rogatory or other similar formalities are required".

198. Subject to the above deliberations, the Commission approved the substance of article 12 and referred it to the drafting group.

Article 13. Recognition of a foreign proceeding and of a foreign representative

199. The text of the article, as considered by the Commission, was as follows:

"(1) A foreign representative may apply to the competent court for recognition of the foreign proceeding and of the foreign representative's appointment.

"(2) An application for recognition shall be accompanied by:

"(a) the duly authenticated decision [or decisions] commencing the foreign proceeding and appointing the foreign representative; or

"(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

"(c) in the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

"(3) Subject to article 14, the foreign proceeding shall be recognized:

"(a) as a foreign main proceeding if the foreign court has jurisdiction based on the centre of the debtor's main interests; or

"(b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of article 2(f) in the foreign State.

"(4) Absent proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is deemed to be the centre of the debtor's main interests.

"(5) If the decision or certificate referred to in paragraph (2) of this article indicates that the foreign proceeding is a proceeding as defined in article 2(a) and that the foreign representative has been appointed within the meaning of article 2(d), the court is entitled to so presume.

"(6) No legalization of documents supplied in support of the application for recognition or other similar formality is required.

"(7) The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

"(8) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time."

200. The Commission noted that, under the Model Provisions, the recognition of a foreign representative did not occur independently from the recognition of the foreign proceeding in which the foreign representative had been appointed. It was therefore decided that, for purposes of clarity, the words "and of a foreign representative" should be deleted from the title of article 13. For the same reason, it was agreed to delete the words "and of the foreign representative's appointment" in paragraph (1) and replace those words with the words "in which the foreign representative has been appointed".

201. It was pointed out that the use of the word "jurisdiction" in paragraph (3)(a) might lead to disputes as to whether the foreign court was in fact entitled to assume jurisdiction over the foreign proceeding. The Commission therefore decided to redraft that paragraph so as to qualify a foreign main proceeding as one that took place in the State where the debtor had the centre of its main interests.

202. With regard to paragraph (3)(b), it was noted that the Model Provisions did not envisage recognition of a proceeding opened in a foreign State in which the debtor had assets but no establishment as defined in article 2(c). That solution was criticized since the Model Provisions allowed opening of an insolvency proceeding in the enacting State even if there was no establishment in that State (article 22(1), which required only the presence of assets in the enacting State), but did not contemplate recognition of a foreign proceeding if there was no establishment in the foreign State. That criticism was not supported.

203. Questions were asked as to the relationship between the notion of "legalization" in paragraph (6) and the notion of "authenticated" document in paragraph (2)(a). In response it was noted that paragraph (2)(a) referred to procedures normally followed in the originating jurisdiction to certify that the documents in question were accurate and had been issued by the named authorities. Paragraph (6), in turn, referred to formalities by which diplomatic or consular agents of the enacting State certified matters such as authenticity of signatures, the capacity in which the person signing the document had acted, or the identity of the seal or stamp on a document. Legalization procedures were often cumbersome and time-consuming, and might in some cases involve various authorities at different levels or offices. That was the reason why paragraph (6) dispensed with the requirement of legalization, having regard to the need for expediting the proceedings in the enacting State.

204. In respect of paragraph (6), the view was expressed that eliminating legalization requirements might be in conflict with the international obligations of the enacting State. Several States were parties to bilateral or multilateral treaties on mutual recognition and legalization of documents, such as the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents,[14] adopted under the auspices of the Hague Conference on Private International Law, which provided specific simplified procedures for the legalization of documents originating from signatory States. In response it was stated, however, that the referred to Hague Convention left in effect, for example, any laws, regulation or practice that abolished or simplified legalization procedures and that therefore a conflict was unlikely to arise. To the extent there might exist a conflict, article 3 provided a solution.

205. Also, the concern was expressed that paragraph (6) seemed to preclude the possibility for the court to require legalization. The view was expressed that the court in some jurisdictions might find it difficult to act on the basis of foreign documents that had not been legalized through procedures regularly used in the enacting State, particularly with regard to documents emanating from jurisdictions with which they had limited or no familiarity. It was suggested that paragraph (6) should authorize the court, in exceptional circumstances, to require legalization.

206. Having considered the different views expressed, the Commission decided that it was important, for the purpose of expediting the recognition procedure, to provide that prior legalization was not mandatory for the court to act upon an application for recognition, and that the court was authorized to presume that the documents submitted with the application were authentic even if they had not been legalized. It was decided to replace the words "duly authenticated" with the words "certified copy of the" in paragraph (2)(a).

207. The Commission was reminded of its earlier discussions concerning the possibility of modification of the court's decision to recognize the foreign proceeding and of its decision to reconsider that matter within the context of article 13 (see paragraphs 91-92 above). For the purpose of addressing that issue, it was proposed to add a new paragraph to article 13 to provide that nothing in articles 13 and 14 precluded the modification or termination of recognition when the grounds for granting recognition were lacking or ceased to exist in full or in part. The Commission generally concurred with that proposal and referred it to the drafting group. It was agreed that the Guide to Enactment should contain an explanation to the effect that such modification or termination would normally follow the procedures that governed, in the enacting State, appeal or rescission of judicial decisions. The Commission also decided to include in article 13 a provision obligating the foreign representative to inform the court, from the time of filing the application for recognition of the foreign proceeding, of any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment (see paragraphs 114 and 115 above).

208. A proposal was made to insert an additional paragraph in article 13 to the effect that the recognition granted under that article had only the consequences set forth in the Model Provisions. It was explained that the proposal was intended to address a concern previously expressed that, in the system of the Model Provisions, the recognition of a foreign proceeding did not entail that the foreign proceeding would have in the enacting State the full range of legal effects that it had in the originating jurisdiction. That proposal was objected to on the ground that the Model Provisions gave the foreign representative a number of faculties (e.g. to intervene in local proceedings; to participate in local collective proceedings; to apply for relief) which were not entirely regulated in the Model Provisions and which the foreign representative would have to exercise in accordance with other laws of the enacting State. Therefore, it would be inappropriate to provide that the effects of the recognition were limited to the consequences set forth in the Model Provisions. Accordingly, the proposed addition was not adopted.

209. Subject to the above decisions, the Commission approved the substance of article 13 and referred it to the drafting group.

Article 19 bis. Actions to avoid acts detrimental to creditors

210. The text of the article, as considered by the Commission, was as follows:

> "Upon recognition of a foreign proceeding, the foreign representative [is permitted] [has standing] to initiate [refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available, according to the law of the enacting State, to the local insolvency administrator in the context of insolvency proceedings in the enacting State]."

211. The Commission considered the question whether the Model Provisions should expressly provide that a foreign representative had procedural "standing" (a concept in some procedural systems referred to by expressions such as "active procedural legitimation", "active legitimation" or "legitimation") to

initiate actions to avoid or otherwise render ineffective legal acts detrimental to creditors (such actions were sometimes referred to as "Paulian actions").

212. It was widely considered that the right to commence such actions was in the interest of creditors and that they were essential, and sometimes the only effective means, for protecting the integrity of the debtor's assets. Considerable support was expressed for the view that a foreign representative should not be prevented from initiating such actions by the sole fact that the foreign representative was not the insolvency administrator appointed in the enacting State.

213. It was said that, if such standing was to be conferred on the foreign representative, it should extend only to actions that were available to the local insolvency administrator in the context of an insolvency proceeding opened in the enacting State; care should be taken to avoid creating an impression that the foreign representative was equated with individual creditors, who under many legal systems had a right to initiate actions to avoid or otherwise render ineffective legal acts detrimental to creditors. It was stressed that the conditions for an action that might be initiated by an insolvency administrator were different from the conditions for actions that might be brought by individual creditors.

214. Strong opposition was expressed to including such a provision in the Model Provisions. It was said that such actions had the potential of creating uncertainty about concluded or performed transactions; that they encompassed cases where the parties to such transactions were deemed to have acted to the detriment of creditors (but in fact might have been unaware of the detrimental effect) and that, thus, the actions unnecessarily affected third parties who were in good faith and unaware of the possibility that a concluded transaction could be rendered ineffective; that such actions were based on the premise that the debtor was subject to an insolvency proceeding in the State, which (apart from the fact that the foreign proceeding was recognized in the enacting State) was not the case; that, because of a potentially destabilizing effect of such actions, the administration of loans might be adversely affected; that the issue in question was of great complexity and did not lend itself to a harmonized solution within the framework of the Model Provisions.

215. During the discussion the view prevailed that a provision on the subject was desirable in the Model Provisions. It was understood that the provision should only confer standing to bring actions under consideration. In particular, the provision should not create substantive rights and should not take a stand as to which law was applicable to a claim that a transaction should be avoided or otherwise rendered ineffective.

216. The Commission adopted the prevailing view and requested the drafting group to prepare the text of the draft article using draft article 19 bis as a basis. The Commission also adopted the proposal that, if the foreign proceeding was a non-main proceeding, the limitation analogous to the one expressed in draft article 17(3) should be included in the provision, namely, that "the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding".

4. Review of the draft text prepared by the drafting group

217. After its substantive consideration of the draft Model Provisions, the Commission reviewed the draft articles prepared by the drafting group, which had been established with the task of implementing the decisions taken by the Commission (see paragraph 28 above).

218. The Commission approved the suggestion that the draft text should bear the title "Model Law" rather than "Model Provisions", in line with other pieces of model legislation prepared by the

Commission and in recognition of the possibility that the text could be enacted as a separate statute or as a discrete section or part of a law on insolvency.

219. During its review, the Commission made minor drafting changes. The text, as reviewed by the Commission, and subsequently approved at its 630th meeting on 30 May 1997 (see paragraph 221 below), is reproduced in annex I to the present report.[15]

5. Preparation of the Guide to Enactment

220. The Commission, after finalizing the substantive consideration of the Model Law, did not have time to consider the "draft Guide to Enactment of the UNCITRAL Model Provisions on Cross-Border Insolvency", prepared by the Secretariat (A/CN.9/436). Nevertheless, the Commission wished that the Guide should be prepared as soon as feasible after the session of the Commission. Since much of the material for the future Guide was to be found in the report of the current session of the Commission and other travaux préparatoires, the Commission requested the Secretariat to prepare a final version of the Guide to Enactment, reflecting the deliberations and decisions at the current session. The Commission mandated the publication of the final version of the Guide to be prepared by the Secretariat together with the text of the Model Law, as a single document.

6. Adoption of the Model Law and recommendation

221. Upon concluding its deliberations on the Model Law, the Commission adopted the following decision at its 630th meeting, on 30 May 1997:

"The United Nations Commission on International Trade Law,

"Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade, and in that respect to bear in mind the interests of all peoples, and in particular those of developing countries, in the extensive development of international trade,

"Noting that increased cross-border trade and investment leads to greater incidence of cases where enterprises and individuals have assets in more than one State,

"Noting also that when a debtor with assets in more than one State becomes subject to an insolvency proceeding, there often exists an urgent need for cross-border cooperation and coordination in the supervision and administration of the insolvent debtor's assets and affairs,

"Considering that inadequate coordination and cooperation in cases of cross-border insolvency reduce the possibility of rescuing financially troubled but viable businesses, impede a fair and efficient administration of cross-border insolvencies, make it more likely that the debtor's assets would be concealed or dissipated, and hinder reorganizations or liquidations of debtors' assets and affairs that would be the most advantageous for the creditors and other interested persons, including the debtors and the debtors' employees,

"Noting further that many States lack a legislative framework that would make possible or facilitate effective cross-border coordination and cooperation,

"Being convinced that fair and internationally harmonized legislation on cross-border insolvency that respects the national procedural and judicial systems and is acceptable to States

with different legal, social and economic systems, would contribute to the development of international trade and investment,

"Considering that a set of internationally harmonized model legislative provisions on cross-border insolvency is needed to assist States in modernizing their legislation governing cross-border insolvency,

"1. Adopts the UNCITRAL Model Law on Cross-Border Insolvency;

"2. Requests the Secretary-General to transmit the text of the UNCITRAL Model Law on Cross-Border Insolvency, together with the Guide to Enactment of the Model Law prepared by the Secretariat, to Governments and other interested bodies;

"3. Recommends that all States review their legislation on cross-border aspects of insolvency to determine whether the legislation meets the objectives of a modern and efficient insolvency system and that, in that review, give favourable consideration to the UNCITRAL Model Law on Cross-Border Insolvency, bearing in mind the need for an internationally harmonized legislation governing instances of cross-border insolvency."

222. The Commission expressed its appreciation to the International Association of Insolvency Practitioners (INSOL) for its expert advice provided during all stages of the preparatory work and for co-organizing the first UNCITRAL-INSOL Colloquium on Cross-Border Insolvency and the subsequent two UNCITRAL-INSOL Judicial Colloquia on the work of the Commission in this area. The Commission also expressed its appreciation to Committee J (Insolvency) of the Section on Business Law of the International Bar Association for its active consultative assistance during the preparation of the Model Law. The Commission was also appreciative of the suggestions given to the Secretariat during the preparatory work by the Commission on International Bankruptcy Law of the International Association of Lawyers.

7. Future work

223. The Commission heard the proposal that, having completed the work on model legislation, it should prepare model provisions for an international treaty, bilateral or multilateral, on judicial cooperation and assistance in cross-border insolvency or a full-fledged treaty on those matters. It was recalled that such work had been mentioned as a possibility at the twentieth session of the Working Group on Insolvency Law (A/CN.9/433, paras. 16-20). In addition to that proposal, various other topics were mentioned with respect to which it might be worthwhile to explore the desirability and feasibility of work at the international level; those were: legislative treatment of cross-border insolvency in the banking and financial services sector, preparation of model agreements or practices for cross-border cooperation in reorganizations of insolvent enterprises, conflict-of-laws solutions in cross-border insolvency cases, and the effects of insolvency proceedings on arbitration agreements and arbitral proceedings.

224. After discussion, the Commission adopted the view that it would be preferable, before deciding whether to undertake work towards a treaty or to deal with any other topic mentioned, to evaluate the impact of, and the experience with, the Model Law and to await the results of similar work in other international forums, such as the European Union, and possibly the Organization of American States. In the meantime, the Secretariat was requested to monitor the developments in the field and to formulate suggestions for a future session of the Commission as to the desirability and feasibility of any such work.

225. During the final considerations of the Model Law, it was proposed, and the Commission agreed with the proposal, that the Secretariat should collect information on the enactment of the Model Law in various States, and, in cooperation with relevant organizations that had the expertise in the area, to monitor the developing practices, experience and issues that would emerge from the use of national laws based on the Model Law. The holding of judicial colloquiums, which had been convened during the preparatory work towards the Model Law (see paragraphs 12 and 17 above), was mentioned as one possible method for such evaluation work.

III. PRIVATELY FINANCED INFRASTRUCTURE PROJECTS[16]

A. Background

226. At its twenty-ninth session, in 1996, the Commission decided to prepare a legislative guide on build-operate-transfer (BOT) and related types of projects.[17] The Commission reached that decision after recommendations by many States and consideration of a report prepared by the Secretary-General (A/CN.9/424) which contained information on work then being undertaken by other organizations in that field, as well as an outline of issues covered by relevant national laws.

227. It was reported that, unlike traditional publicly funded projects, in which the Government was responsible for the entire implementation of the project, including for obtaining financing and guaranteeing its repayment, in the case of privately financed infrastructure projects the Government engaged a private entity to develop, maintain and operate an infrastructure facility in exchange for the right to charge a price, either to the public or to the Government, for the use of the facility or the services or goods it generated.

228. In its deliberations, the Commission noted the interest that various forms of private participation in public infrastructure projects had raised in many States, in particular in developing countries, as the successful implementation of such projects would enable States to achieve significant savings in public expenditure and to reallocate the resources that otherwise would have been invested in infrastructure in order to meet more pressing social needs. Furthermore, since those projects were built and, during the concession period, operated by the project company, the country benefited from private sector expertise in operating and managing the relevant infrastructure facility. The Government might expect in particular to achieve efficiency gains and high standards of service, which sometimes might not be provided by State monopolies.

229. It was noted, however, that the implementation of privately financed infrastructure projects required a favourable legal framework that fostered the confidence of potential investors, national and foreign, while protecting public interests. Thus, the Commission considered that it would be useful to provide legislative guidance to States preparing or modernizing legislation relevant to those projects. The Commission requested the Secretariat to review issues suitable for being dealt with in a legislative guide and to prepare draft materials for consideration by the Commission.

230. At its thirtieth session, the Commission had before it a table of contents setting out the topics proposed to be covered by the legislative guide, which were followed by annotations in some detail concerning the issues suggested to be discussed therein (A/CN.9/438). The Commission further had before it initial drafts of chapter I, "Scope, purpose and terminology of the Guide" (A/CN.9/438/Add.1), chapter II, "Parties and phases of privately financed infrastructure projects" (A/CN.9/438/Add.2) and chapter V, "Preparatory measures" (A/CN.9/438/Add.3).

B. General remarks

231. It was pointed out that the annotated table of contents contained in document A/CN.9/438 had been prepared by the Secretariat for the purpose of enabling the Commission to make an informed decision on the proposed structure of the draft legislative guide and its contents. The Commission was informed that, in preparing the draft materials, the Secretariat had borne in mind the need to keep the appropriate balance between the objective of attracting private investment for infrastructure projects and the protection of the interests of the host Government and the users of the infrastructure facility.

232. The Commission noted the proposal that the draft legislative guide should consider which aspects of the issues mentioned in document A/CN.9/438 should be dealt with in legislation, while leaving others to be addressed by the parties in the agreements concerning the implementation of the project.

233. The Commission expressed its satisfaction at the commencement of the work towards the preparation of a legislative guide on privately financed infrastructure projects. It was stated that the legislative guide would, upon completion, constitute a useful tool for Governments in reviewing and modernizing their legislation pertaining to those projects. In that connection, it was observed that many Governments, but also international organizations and private entities, had expressed keen interest in the work of the Commission concerning those projects. It was generally felt that the documents submitted by the Secretariat presented a good basis for the work of the Commission in that field.

C. Structure of the draft legislative guide and issues to be covered

234. The Commission engaged in a general discussion on the proposed structure of the draft legislative guide, as set out in document A/CN.9/438, and on the issues suggested to be discussed therein, so as to allow the Secretariat to prepare the remaining draft chapters of the legislative guide.

235. The Commission exchanged views on the nature of the issues to be discussed in the draft legislative guide and possible methods for addressing them. It was noted that, in dealing with individual topics, the draft legislative guide should distinguish among the following categories of issues: general legal issues under the laws of the host country; issues relating to legislation specific to privately financed infrastructure projects; issues that might be dealt with at the regulatory level; and issues of a contractual nature. Although a clear distinction might not always be feasible, it was noted that the draft legislative guide should focus primarily on issues relating to legislation specific to, or of particular importance for, privately financed infrastructure projects. Regarding the drafting techniques that might be used in the preparation of the draft legislative guide, interventions were made pointing out the usefulness of sample provisions for the purpose of illustrating possible legislative solutions for the issues dealt with in the guide. It was suggested that the draft legislative guide should take into consideration and discuss, as appropriate, the cost implications of possible solutions for particular issues.

236. As a general comment on the subject matters to be covered by the draft legislative guide, it was pointed out that infrastructure projects increasingly involved the combined participation of public authorities and private sector entities. It was felt to be important to ensure that the draft legislative guide would adequately reflect that development. Furthermore, it was pointed out that governmental decisions to invite private participation in infrastructure projects might result from the consideration of a number of factors, not limited to the objective of reducing public expenditure. It was noted that issues pertaining to privately financed infrastructure projects involved also issues of market structure and market regulation and that consideration of those issues was important for the treatment of a number of individual topics proposed to be covered by the guide. For instance, issues of sector structure, such as the level of competition the host Government wished to promote in the sector concerned, would affect a governmental decision as to whether to grant exclusivity to one concessionaire or whether to award multiple concessions. Similarly, issues of sector regulation, such as whether prices and quality of services should be established by the project company or by a regulatory agency, would be crucial for establishing an appropriate regulatory mechanism.

237. Several proposals were made concerning the contents of future chapters of the legislative guide. In particular, the Secretariat was requested:

(a) To elaborate, in chapter III (A/CN.9/438, paras. 6-16), on the different legal regimes governing the infrastructure in question, as well as on the services provided by the project company, issues in which there were significant differences among legal systems. Particular attention should be given to constitutional issues relating to privately financed infrastructure projects and the role of sector-specific regulation, as well as commercial finance legislation and legislation on special corporate entities;

(b) To emphasize, in chapter IV (A/CN.9/438, paras. 17-26), that the appropriateness of the selection procedure, or the need to resort to any such procedure, depended not only on the nature of each individual project, but also on the policy pursued by the Government for the sector concerned and the extent to which the Government wanted that sector to be subject to free competition. It was also suggested that the draft legislative guide should discuss issues raised by unsolicited proposals;

(c) To emphasize, in chapter VI (A/CN.9/438, paras. 29-38), the obligations of the project company to transfer technology and to highlight the interests of the host Government in developing the skills of local personnel. It was also suggested to consider issues relating to competition policy and possible monopoly in the provision of services;

(d) To consider, in chapter VII (A/CN.9/438, paras. 39-45), possible manners in which privately financed infrastructure projects could be facilitated with a minimum involvement of governmental guarantees. With regard to forms of governmental support to infrastructure projects, it was suggested that the draft legislative guide should give attention to specific forms of governmental support, such as facilitation of entry visas and work permits; waiver of immigration or repatriation restrictions for foreign personnel; waiver of currency exchange restrictions;

(e) To consider, in chapter X (A/CN.9/438, paras. 67-73), the desirability and appropriateness of dealing with performance issues in legislation specific to privately financed infrastructure projects;

(f) To give particular attention, in chapter XI (A/CN.9/438, paras. 74-83), to questions such as ownership of infrastructure and related property; responsibility for residual liabilities of the project company; terms of transfer of the infrastructure to the host Government in BOT projects. Attention should also be given to cases where the host Government might decide to keep the infrastructure permanently under operation by private sector entities;

(g) To elaborate, in chapter XII (A/CN.9/438, paras. 84-87) and chapter XIII (A/CN.9/438, paras. 88-92), on the possibility for, and the limitations of, choice-of-law clauses and arbitration agreements, taking into account the specific nature of the various contractual arrangements involved, emphasizing the role of choice-of-law clauses in the contracts between the project company and its suppliers and other contractors. It was also suggested to further consider the desirability for the parties to make use of commercial law rules elaborated by international bodies.

D. Consideration of draft chapters

Chapter I. Scope, purpose and terminology of the Guide (A/CN.9/438/Add.1)

238. As a general comment, it was suggested that the guide should avoid the impression that it only dealt with infrastructure projects that were exclusively financed with private funds or through the "project finance" modality. It was further suggested that the draft legislative guide should stress the role that local capital providers and investors might play in the development of infrastructure projects.

239. Following that same line of thought, it was suggested that chapter I should make it clear that infrastructure projects could also be carried out by entities in which the host Government participated. There was general agreement that the draft legislative guide should also expressly cover those entities, as long as they were subject to substantially the same legal regime, and operated under essentially the same rules, that applied to the operations of private entities.

240. Support was expressed for not dealing with transactions for the"privatization" of State property by means of the sale of State property or shares of State-owned entities to the private sector. However, it was suggested that the draft legislative guide should follow a flexible approach and that it should not exclude transactions whereby the State transferred to the private sector the ownership of State-owned entities entrusted with the provision of some form of public service, a process sometimes referred to as "divestiture".

241. It was pointed out that in some projects, such as construction and operation of power generation plants, the project company might be granted the right to exploit some natural resources, for instance as an ancillary activity, or for the purpose of producing fuel necessary for the operation of the concession. It was suggested that the draft legislative guide should not exclude transactions of that type, as long as the concession to exploit natural resources was only ancillary to a main infrastructure project.

Chapter II. Parties and phases of privately financed infrastructure projects (A/CN.9/438/Add.2)

242. As an introduction to privately financed infrastructure projects, draft chapter II contained general remarks on the concept of project finance, the parties to a privately financed infrastructure project and the phases of its implementation. It was noted that the purpose of draft chapter II was to provide the reader with background information and to facilitate making an informed choice of possible legislative solutions for the issues subsequently discussed in the draft legislative guide.

243. As a general comment on draft chapter II, it was suggested that more emphasis should be given therein to the implications of internal approval and licensing requirements of the host Government and the need for coordinating all agencies involved. Furthermore, it was suggested that the draft legislative guide should point out the legal risks faced by prospective concessionaires during the precontractual phase (e.g. unsuccessful negotiations, subsequent avoidance of the contract) and the need to reduce those risks. It was also suggested that chapter II of the draft legislative guide should consider issues that might arise in connection with the renegotiation of the terms of the concession or as a result of its transfer to another concessionaire.

Chapter V. Preparatory measures (A/CN.9/438/Add.3)

244. It was proposed to discuss in chapter V a few important preparatory steps for the implementation of the project: the acquisition of land for the construction of the facility, including access to the project site; the establishment of the consortium or company that would be granted the concession to build and operate the infrastructure facility; the issuance of licences and approvals necessary for carrying out the project activities and suitable arrangements for ensuring the coordination among governmental entities concerned.

245. It was suggested that chapter V should consider the extent to which national legislation could adequately address those issues without depriving the parties of the flexibility necessary for meeting the needs of individual projects. With regard to the acquisition of a site for the project company, it was suggested to give attention in the draft chapter to the position and interests of the owners of property that might be expropriated for the purpose of building the infrastructure.

246. In connection with the legal form that might be assumed by the project company, it was proposed that the draft legislative guide should follow a flexible approach, so as not to discourage possible new and advantageous mechanisms of business cooperation.

E. Future work

247. Subject to the deliberations reflected above, the Commission generally approved the line of work proposed by the Secretariat, as contained in documents A/CN.9/438 and Add.1-3. The Commission requested the Secretariat to seek the assistance of outside experts, as required, in the preparation of future chapters to be considered by the Commission at its thirty-first session, in 1998. The Commission invited Governments to identify experts who could be of assistance to the Secretariat in that task.

IV. ELECTRONIC COMMERCE

248. It was recalled that the Commission, at its twenty-ninth session, decided to place the issues of digital signatures and certification authorities on its agenda. The Working Group on Electronic Commerce was requested to examine the desirability and feasibility of preparing uniform rules on those topics. It had been agreed that work to be carried out by the Working Group at its thirty-first session could involve the preparation of draft rules on certain aspects of the above-mentioned topics. The Working Group had been requested to provide the Commission with sufficient elements for an informed decision to be made as to the scope of the uniform rules to be prepared. As to a more precise mandate for the Working Group, it had been agreed that the uniform rules to be prepared should deal with such issues as: the legal basis supporting certification processes, including emerging digital authentication and certification technology; the applicability of the certification process; the allocation of risk and liabilities of users, providers and third parties in the context of the use of certification techniques; the specific issues of certification through the use of registries; and incorporation by reference.[18]

249. The Commission had before it the report of the Working Group on the work of its thirty-first session (A/CN.9/437). As to the desirability and feasibility of preparing uniform rules on issues of digital signatures and certification authorities, the Working Group indicated to the Commission that it had reached consensus as to the importance of, and the need for, working towards harmonization of law in that area. While it had not made a firm decision as to the form and content of such work, it had come to the preliminary conclusion that it was feasible to undertake the preparation of draft uniform rules at least on issues of digital signatures and certification authorities, and possibly on related matters. The Working Group recalled that, alongside digital signatures and certification authorities, future work in the area of electronic commerce might also need to address: issues of technical alternatives to public-key cryptography; general issues of functions performed by third-party service providers; and electronic contracting (A/CN.9/437, paras. 156-157). With respect to the issue of incorporation by reference, the Working Group concluded that no further study by the Secretariat was needed, since the fundamental issues were well known and it was clear that many aspects of battle-of-forms and adhesion contracts would need to be left to applicable national laws for reasons involving, for example, consumer protection and other public-policy considerations. The Working Group was of the opinion that the issue should be dealt with as the first substantive item on its agenda, at the beginning of its next session (A/CN.9/437, para. 155).

250. The Commission expressed its appreciation for the work already accomplished by the Working Group at its thirty-first session, endorsed the conclusions reached by the Working Group, and entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. With respect to the exact scope and form of such uniform rules, it was generally agreed that no decision could be made at such an early stage of the process. It was felt that, while the Working Group might appropriately focus its attention on the issues of digital signatures in view of the apparently predominant role played by public-key cryptography in the emerging electronic-commerce practice, the uniform rules to be prepared should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce. Thus, the uniform rules should not discourage the use of other authentication techniques. Moreover, in dealing with public-key cryptography, those uniform rules might need to accommodate various levels of security and to recognize the various legal effects and levels of liability corresponding to the various types of services being provided in the context of digital signatures. With respect to certification authorities, while the value of market-driven standards was recognized by the Commission, it was widely felt that the Working Group might appropriately envisage the establishment of a minimum set of standards to be met by certification authorities, particularly where cross-border certification was sought.

251. As an additional item to be considered in the context of future work in the area of electronic commerce, it was suggested that the Working Group might need to discuss, at a later stage, the issues of jurisdiction, applicable law and dispute settlement on the Internet. The Commission was informed that a colloquium on the issues of jurisdiction and applicable law on the Internet would take place in June 1997 under the auspices of the Hague Conference on Private International Law. The Commission was also informed that an international conference convened by the Organisation for Economic Co-operation and Development in November 1997 would attempt to develop a coordinated approach to the issues of electronic commerce among interested Governments, intergovernmental organizations, non-governmental organizations and private sector groups. The Commission expressed the hope that those two events could be attended and reported upon by the Secretariat.

V. ASSIGNMENT IN RECEIVABLES FINANCING

252. It was recalled that the Commission had discussed legal issues in the area of assignment of claims at its twenty-sixth session, in 1993,[19] at its twenty-seventh session, in 1994,[20] and at its twenty-eighth session, in 1995,[21] and had entrusted, at its twenty-eighth session, the Working Group on International Contract Practices with the task of preparing a uniform law on assignment in receivables financing.

253. The Working Group commenced its work at its twenty-fourth session, held at Vienna from 13 to 24 November 1995 (A/CN.9/420), and continued at its twenty-fifth session, held in New York from 8 to 19 July 1996 (A/CN.9/432), and at its twenty-sixth session, held at Vienna from 11 to 12 November 1996 (A/CN.9/434). It was noted that, at its twenty-fifth session, the Working Group had decided to proceed with its work on the assumption that the text being prepared would take the form of a convention (A/CN.9/432, para. 28). On the basis of the considerations of the Working Group at its twenty-sixth session, the Secretariat prepared a revised version of the draft Convention on Assignment in Receivables Financing (A/CN.9/WG.II/WP.93).

254. At the present session, the Commission had before it the reports on the twenty-fifth and twenty-sixth sessions of the Working Group (A/CN.9/432 and A/CN.9/434). It was noted that the Working Group had reached agreement in principle on a number of issues, including the validity of bulk assignments of present and future receivables, the time of transfer of receivables, no-assignment clauses, representations of the assignor and protection of the debtor. In addition, it was noted that the main outstanding issues included effects of the assignment on third parties, i.e. creditors of the assignor and the administrator in the insolvency of the assignor, as well as scope and conflict-of-laws issues.

255. While the effects of the assignment on third parties were said to be a difficult matter to achieve consensus on, interest was expressed in the proposal by the Secretariat contained in the revised articles of the draft Convention (A/CN.9/WG.II/WP.93) allowing States to choose by way of a declaration between a substantive rule based on the time of assignment or a conflict-of-laws rule, and a rule based on the time of registration, which would take effect only upon establishment of a suitable registration system. A number of suggestions were made, including: that the scope of application of the draft Convention should be limited to the assignment of contractual receivables for financing purposes; and that the conflict-of-laws issues should be addressed in cooperation with the Hague Conference on Private International Law, taking into account the commercial character of the transactions covered and the needs of the parties involved.

256. The Commission noted that the draft Convention had aroused the interest of the receivables financing community and Governments, since it had the potential of increasing the availability of credit at more affordable rates. Therefore, the Commission expressed the hope that the Working Group would proceed with its work expeditiously, so that after three more sessions, scheduled to take place at Vienna from 20 to 31 October 1997, in New York from 2 to 13 March 1998 and at Vienna in the autumn of 1998, the Working Group would be able to submit the draft Convention for consideration by the Commission at its thirty-second session, in 1999.

VI. MONITORING IMPLEMENTATION OF THE 1958 NEW YORK CONVENTION

257. It was recalled that the Commission, at its twenty-eighth session in 1995,[22] had approved the project, undertaken jointly with Committee D of the International Bar Association, aimed at monitoring the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Stressing that the purpose of the project was not to monitor individual court decisions applying the Convention, the Commission called upon the States parties to the Convention to send to the Secretariat the laws dealing with the recognition and enforcement of foreign arbitral awards. In November 1995, the Secretariat sent to the States parties a questionnaire relating to the legal regime governing the recognition and enforcement of foreign awards, prepared in cooperation with Committee D of the International Bar Association. Subsequent to that date, the Secretariat repeated its request to the States parties for the relevant information.

258. The Commission heard a progress report on that project. The Secretariat reported that, while 112 States were contracting parties to the 1958 New York Convention, it had received only 40 replies to the questionnaire. The Commission called upon the States parties to the Convention that had not yet replied to the questionnaire of the Secretariat to do so. The Secretariat was requested to prepare a note presenting the findings based on the analysis of the information gathered.

259. It was pointed out that, at the forthcoming session of the Commission, special commemorative meetings would be devoted to issues of arbitration on 10 June 1998, to celebrate the fortieth anniversary of the 1958 New York Convention. On that occasion, in addition to speeches pronounced by former participants in the diplomatic conference that had adopted the 1958 New York Convention, the Commission would hear a report on the Congress of the International Council for Commercial Arbitration, to be held in Paris from 3 to 6 May 1998. Also envisaged was a discussion of possible work towards a new convention or possible additions to the UNCITRAL Model Law on International Commercial Arbitration.[23] Triggered by the initiative of the Working Party on International Contract Practices in Industry (WP.5) of the Economic Commission for Europe to undertake a limited revision of the European Convention on International Commercial Arbitration (Geneva, 1961), it was suggested that, on the occasion of both the anniversary of the 1958 New York Convention and the possible revision of the 1961 Geneva Convention, consideration might be given to providing the most useful features of the 1961 Geneva Convention to a universal membership while introducing, at the same time, a number of additions to the 1958 New York Convention (without touching that Convention itself), for example, concerning written form requirements, interim measures of protection, and court assistance for the taking of evidence. It was generally agreed that the suggestion was a very interesting one that deserved in-depth consideration.

VII. CASE LAW ON UNCITRAL TEXTS (CLOUT)

260. The Commission noted with appreciation that since its twenty-ninth session, in 1996, three additional sets of abstracts with court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), the United Nations Convention on the Carriage of Goods by Sea, 1978[24] (Hamburg Rules) and the UNCITRAL Model Law on International Commercial Arbitration had been published (A/CN.9/SER.C/ABSTRACTS/10-12).

261. The Commission also noted with appreciation that a search engine had been placed on the website of UNCITRAL on the Internet (http://www.un.or.at/uncitral) to enable CLOUT users to effectuate a search into CLOUT cases and other documents. A demonstration of the search engine was provided to the Commission. The Secretariat was encouraged to continue its efforts to increase the availability of UNCITRAL documents through the Internet.

262. The Commission expressed its appreciation to the national correspondents for their work and urged States to cooperate with the Secretariat in the operation of CLOUT and to facilitate the carrying out of the tasks of the national correspondents. It was pointed out that, as the number of cases being prepared for inclusion in the CLOUT collection increased, it was of vital importance that the abstracts submitted by national correspondents be of such quality that they would not require heavy editing by the Secretariat. The Commission emphasized the importance of CLOUT for the purpose of promoting the uniform application of the legal texts that resulted from its work. The Commission noted that, by being issued in the six official languages of the United Nations, CLOUT constituted an invaluable tool for practitioners, academics and government officials. The Commission urged every State that had not yet appointed a national correspondent to do so.

263. The Commission noted also that the work of the Secretariat in editing abstracts, storing decisions and awards in their original form, translating abstracts into the other five official languages of the United Nations, publishing them in the six official languages of the United Nations, forwarding abstracts and full texts of decisions and awards to interested parties upon request and establishing and operating the CLOUT search engine had substantially increased with the increasing number of decisions and awards covered by CLOUT. The Commission therefore requested that adequate resources be made available to the Secretariat for the effective operation of CLOUT.

VIII. TRAINING AND ASSISTANCE

264. The Commission had before it a note by the Secretariat (A/CN.9/439) outlining the activities that had taken place since its twenty-ninth session and indicating the direction of future activities being planned. It was noted that UNCITRAL seminars and briefing missions for government officials were designed to explain the salient features and utility of international trade law instruments of UNCITRAL.

265. It was reported that, since the twenty-ninth session, seminars and briefing missions had taken place at Bridgetown (regional seminar) from 23 to 26 April 1996, at Hanoi on 31 August 1996, at Vientiane from 3 to 6 September 1996, at Bangkok from 9 to 10 September 1996, at Kuala Lumpur from 5 to 6 November 1996, at Cairo from 2 to 5 December 1996 and at Pretoria from 3 to 4 March 1997. The Secretariat reported that for the remainder of 1997 and up to the thirty-first session of the Commission, in June 1998, seminars and legal-assistance briefing missions were being planned in Africa, Asia, Latin America and eastern Europe.

266. The Commission expressed its appreciation to the Secretariat for the activities undertaken since its twenty-ninth session and emphasized the importance of the training and technical assistance programme for promoting awareness of its work and disseminating information on the legal texts it had produced. It was pointed out that seminars and briefing missions were particularly useful for developing countries lacking expertise in the areas of trade and commercial law covered by the work of UNCITRAL. The Commission noted the relevance of uniform commercial law, in particular legal texts prepared by UNCITRAL, in the economic integration efforts being undertaken by many countries and emphasized the important role that the training and technical assistance activities of the Secretariat might play in that context. As for the topics covered in UNCITRAL seminars, the Secretariat was encouraged to include, whenever appropriate, information on texts relevant to international trade prepared by other organizations.

267. The Commission noted the various forms of technical assistance that might be provided by the Secretariat, such as review of preparatory drafts of legislation, assistance in the preparation of drafts, comments on reports of law reform commissions and briefings for legislators, judges, arbitrators and other end-users of UNCITRAL legal texts embodied in national legislation. The Commission encouraged the Secretariat to devise ways to address the continuing and significant increase in the importance being attributed by Governments, by domestic and international business communities and by multilateral and bilateral aid agencies to improving the legal framework for international trade and investment.

268. The Commission emphasized the importance of cooperation and coordination between development assistance agencies providing or financing legal technical assistance with the Secretariat, with a view to avoiding situations in which international assistance might lead to the adoption of national laws that would not represent internationally agreed standards, including UNCITRAL conventions and model laws.

269. The Commission took note with appreciation of the contributions for the seminar programme that had been made by Switzerland. The Commission also expressed its appreciation to those other States and organizations that had contributed to the Commission's programme of training and assistance by hosting seminars. Stressing the importance of extrabudgetary funding for carrying out training and technical assistance activities, the Commission appealed once more to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, particularly in the form of multi-year contributions, so as to facilitate planning and enable the Secretariat to meet the increasing demands in developing countries and newly independent States for training and assistance.

270. At its twenty-ninth session, the Commission had noted that the General Assembly had not had the opportunity, during its fiftieth session, to consider the request made by the Commission at its twenty-eighth session that the UNCITRAL Trust Fund for Symposia be placed on the agenda of the pledging conference taking place within the framework of the General Assembly session, on the understanding that that would not have any effect on the obligation of a State to pay its assessed contribution to the Organization. Accordingly, the Commission had requested that the Sixth Committee recommend to the General Assembly the adoption of a resolution including the UNCITRAL Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL on the agenda of the United Nations Pledging Conference for Development Activities.[25]

271. The General Assembly, in its resolution 51/161, paragraph 11, of 16 December 1996, had decided to include the trust funds for symposia and travel assistance in the list of funds and programmes that were to be dealt with at the United Nations Pledging Conference for Development Activities. The Commission noted with appreciation that decision.

IX. STATUS AND PROMOTION OF UNCITRAL TEXTS

272. The Commission, on the basis of a note by the Secretariat (A/CN.9/440), considered the status of the conventions and model laws emanating from its work, as well as the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The Commission noted with pleasure the new actions of States after 14 June 1996 (date of the conclusion of the twenty-ninth session of the Commission) regarding the following instruments:

(a) Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, as amended by the Protocol of 11 April 1980.[26] New actions by Belarus and Uruguay; number of States parties: 16;

(b) [Unamended] Convention on the Limitation Period in the International Sale of Goods (New York, 1974).[27] New actions by Belarus and Uruguay; number of States parties: 22;

(c) United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). Number of States parties: 25;

(d) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). New actions by Belgium, Luxembourg and Uzbekistan; number of States parties: 48;

(e) United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988).[28] The Convention had two States parties. It required eight more adherences for entry into force;

(f) United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991).[29] The Convention had one State party. It required four more adherences for entry into force;

(g) United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995). The Convention required five adherences for entry into force;

(h) Model Law on International Commercial Arbitration (1985). New jurisdictions that had enacted legislation based on the Model Law: New Zealand and Zimbabwe;

(i) Model Law on International Credit Transfers (1992).[30] A Directive of the European Parliament and of the Council of the European Union had been issued, based on the principles of the Model Law;

(j) UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994);[31]

(k) UNCITRAL Model Law on Electronic Commerce (1996);

(l) Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). New actions by Brunei Darussalam, Kyrgyzstan, Mauritania and Mauritius; number of States parties: 112.

273. Appreciation was expressed for those legislative actions on the texts of the Commission. In the context of the discussion of the status of the United Nations Sales Convention, a suggestion was made that it might be appropriate for the Commission to examine in the future whether the principles

underlying that Convention might be considered for general application to international commercial contracts, i.e. beyond the sales contract. The Commission took note of the suggestion.

274. It was noted that, despite the universal relevance and usefulness of those texts, a great number of States had not yet enacted any of them. In view of the broad support for the legislative texts emanating from the work of the Commission among practitioners and academics in countries with different legal, social and economic systems, the pace of adoption of those texts was slower than it needed to be. An appeal was directed to the delegates and observers participating in the meetings of the Commission and its working groups to engage themselves, to the extent they in their discretion deemed appropriate, in facilitating consideration by legislative organs in their countries of texts of the Commission.

275. In connection with the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, it was stated that draft International Standby Practices were available for comments by States, and that they were intended to be compatible with the Convention.

X. GENERAL ASSEMBLY RESOLUTIONS ON THE WORK OF THE COMMISSION

276. The Commission took note with appreciation of General Assembly resolution 51/162 of 16 December 1996, in which the Assembly had expressed its appreciation to the Commission for completing and adopting the UNCITRAL Model Law on Electronic Commerce and for preparing the Guide to Enactment of the Model Law. In paragraph 2 of the resolution, the General Assembly had recommended that, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information, all States should give favourable consideration to the Model Law when they enacted or revised their laws.

277. The Commission took note with appreciation of General Assembly resolution 51/161, on the report of the Commission on its twenty-ninth session, held in 1996. In particular, it was noted that, in paragraph 6 of the resolution, the Assembly had reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in that field and, in that connection: had called upon all bodies of the United Nations system and had invited other international organizations to bear in mind the mandate of the Commission and the need to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law; and had recommended that the Commission, through its secretariat, should continue to maintain close cooperation with the other international organs and organizations, including regional organizations as well as other bodies such as the International Institute for the Unification of Private Law, which were active in the field of international trade law and other related areas.

278. The Commission further noted with appreciation that the General Assembly, in resolution 51/161, paragraph 7, had reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission, and that, in paragraph 8 of the resolution, the Assembly had expressed the desirability for increased efforts by the Commission, in sponsoring seminars and symposia to provide such training and assistance.

279. The Commission also noted with appreciation that the General Assembly, in resolution 51/161, paragraph 8(b), had appealed to Governments, the relevant United Nations organs, organizations and institutions and individuals to make voluntary contributions to the UNCITRAL Trust Fund for Symposia and, where appropriate, to the financing of special projects. Furthermore, it was noted that the Assembly, in paragraph 9 of the resolution, had appealed to the United Nations Development Programme and other bodies responsible for development assistance, such as the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development, as well as to Governments in their bilateral aid programmes, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission.

280. It was also appreciated that the General Assembly, in resolution 51/161, paragraph 10, had appealed to Governments, the relevant United Nations organs, organizations and institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL, at their request and in consultation with the Secretary-General. That Trust Fund had been established pursuant to Assembly resolution 48/32 of 9 December 1993. As indicated above (see paragraph 271), the Commission noted with appreciation that the Assembly, in resolution 51/161, paragraph 11, had decided to include the UNCITRAL Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL in the list of funds and programmes that were dealt with at the United Nations Pledging

Conference for Development Activities. The Commission also noted with appreciation that the Assembly, in resolution 51/161, paragraph 12, had decided to continue its consideration in the competent Main Committee during the fifty-first session of the Assembly of the question of granting travel assistance to the least developed countries that were members of the Commission, at their request and in consultation with the Secretary-General.

281. The Commission welcomed the request by the General Assembly to the Secretary-General, in paragraph 13 of resolution 51/161, to ensure that adequate resources were allocated for the effective implementation of the programmes of the Commission. The Commission in particular hoped that the Secretariat would be allocated sufficient resources to meet the increased demand for training and assistance.

282. The Commission also noted with appreciation that the General Assembly, in resolution 51/161, paragraph 14, had stressed the importance of bringing into effect the conventions emanating from the work of the Commission and, to that end, had urged States that had not yet done so to consider signing, ratifying or acceding to those conventions.

XI. OTHER BUSINESS

A. Efficiency review

283. It was reported that, in a note verbale dated 14 October 1996, the Secretariat had, as part of the efficiency review of its working methods, invited all States to name national institutions particularly interested in receiving documents and information from it, any research facilities that might be interested in cooperating in specific projects, and law reform commissions, bilateral aid agencies or other bodies involved in law reform projects. It was noted that only 11 States had replied to that questionnaire, and an appeal was made to all other States to assist the Secretariat in those laudable efforts by submitting their replies soon.

284. On the occasion of the ceremony for the thirtieth anniversary of UNCITRAL, hosted by the Federal Ministry of Justice of Austria, it was noted that a private foundation had been established to encourage assistance to UNCITRAL from the private sector. States were invited to nominate persons to work with the foundation.

285. The Commission reiterated the importance of maintaining high standards of quality and accuracy in the translation of UNCITRAL documents into all the official languages of the United Nations. The Commission expressed concern that the translation of documents into some of the official languages was sometimes delayed, thus affecting the work of some delegations. The Commission urged the Secretary-General to make sufficient resources available for the translation of UNCITRAL documents.

B. Bibliography

286. The Commission noted with appreciation the bibliography of recent writings related to the work of the Commission (A/CN.9/441 and Corr.1).

287. The Commission stressed that it was important for it to have as complete as possible information about publications, including academic theses, containing comments on results of its work. It therefore requested Governments, academic institutions and other relevant organizations to send copies of such publications to the Secretariat.

C. Willem C. Vis International Commercial Arbitration Moot

288. It was reported to the Commission that the Institute of International Commercial Law at the Pace University School of Law, in New York, had organized the fourth Willem C. Vis International Commercial Arbitration Moot at Vienna from 1 to 6 April 1997. Legal issues that the teams of students participating in the Moot dealt with were based on the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. In the 1997 Moot, 48 teams participated from law schools from 19 countries. The fifth Moot would be held at Vienna from 4 to 9 April 1998.

289. The Commission heard the report with interest and appreciation. It regarded the Moot, with its international participation, as an excellent method of teaching international trade law and disseminating information about current uniform texts.

D. Date and place of the thirty-first session of the Commission

290. It was decided that the Commission would hold its thirty-first session from 1 to 12 June 1998 in New York.

E. Sessions of working groups

291. The Commission approved the following schedule of meetings for its working groups:

(a) The Working Group on International Contract Practices would hold its twenty-seventh session from 20 to 31 October 1997 at Vienna and its twenty-eighth session from 2 to 13 March 1998 in New York;

(b) The Working Group on Electronic Commerce would hold its thirty-second session from 19 to 30 January 1998 at Vienna.

Notes

[1]Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 19 were elected by the General Assembly at its forty-sixth session on 4 November 1991 (decision 46/309) and 17 were elected by the Assembly at its forty-ninth session on 28 November 1994 (decision 49/315). Pursuant to resolution 31/99 of 15 December 1976, the term of those members elected by the Assembly at its forty-sixth session will expire on the last day prior to the opening of the thirty-first session of the Commission, in 1998, while the term of those members elected at the forty-ninth session will expire on the last day prior to the opening of the thirty-fourth session of the Commission, in 2001.

[2]The election of the Chairman took place at the 607th meeting, on 12 May 1997, the election of the Vice-Chairmen at the 617th and 619th meetings, on 20 and 21 May 1997; and the election of the Rapporteur took place at the 617th meeting, on 20 May 1997. In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and the Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), section II, paragraph 1, will be represented on the bureau of the Commission. (See the report of the United Nations Commission on International Trade Law on the work of its first session (Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 14 (Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, sect. I.A)).)

[3]Official Records of the General Assembly, Forty-eighth Session, Supplement No. 17 (A/48/17), paras. 302-306.

[4]Uniform Commercial Law in the Twenty-first Century: Proceedings of the Congress of the United Nations Commission on International Trade Law, New York, 18-22 May 1992 (United Nations publication, Sales No. E.94.V.14), pp. 155, 158, 251 and 274.

[5]The report on the Colloquium (A/CN.9/398) was considered at the twenty-seventh session of the Commission, in 1994 (Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17 and corrigendum (A/49/17 and Corr.1, paras. 215-222)).

[6]The report on the Judicial Colloquium (A/CN.9/413) was considered at the twenty-eighth session of the Commission, in 1995 (Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17, paras. 382-393)).

[7]Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17), paras. 387 and 391.

[8]The eighteenth session was held at Vienna from 30 October to 10 November 1995 (A/CN.9/419 and Corr.1); the nineteenth session was held in New York from 1 to 12 April 1996 (A/CN.9/422); the twentieth session was held at Vienna from 7 to 18 October 1996 (A/CN.9/433); and the twenty-first session was held in New York from 20 to 31 January 1997 (A/CN.9/435).

[9]Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), para. 237.

[10]United Nations, Treaty Series, vol. 330, No. 4739.

[11]Official Records of the United Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980 (United Nations publication, Sales No. E.82.V.5), part I.

[12]Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), annex I.

[13]United Nations, Treaty Series, vol. 658, No. 9432.

[14]Ibid., vol. 527, No. 7625.

[15]The new article numbers assigned to the provisions of the UNCITRAL Model Law on Cross-Border Insolvency upon adoption by the Commission and the articles as presented in the draft Model Legislative Provisions before the Commission were as follows:

Number of article in Model Law	Number of draft article before the Commission
Preamble	Preamble
1	1
2	2
3	3
4	4
5	5
6	6
7	-
8	-
9	7
10	8
11	9
12	10
13	11
14	12
15(1)	13(1)
15(2)	13(2)
15(3)	-
15(4)	13(7)

Number of article in Model Law	Number of draft article before the Commission
16(1)	13(5)
16(2)	13(6)
16(3)	13(4)
17(1)	14
17(2)	13(3)
17(3)	13(8)
17(4)	-
18	-
19(1)	15(1)
19(1)(a)	-
19(1)(b)	-
19(1)(c)	-
19(2)	15(2)
19(3)	15(3)
19(4)	15(4)
20(1)	16(1)
20(1)(a)	16(1)(a)
20(1)(b)	-
20(1)(c)	16(1)(b)
20(2) to (4)	16(2) to (4)
21(1)	17(1)
21(1)(a)	17(1)(a)
21(1)(b)	-
21(1)(c)	17(1)(b)
21(1)(d)	17(1)(d)
21(1)(e)	17(1)(e)
21(1)(f)	17(1)(c)
21(1)(g)	17(1)(h)
21(2)	17(2)
21(3)	17(3)
22	19
23(1)	19 bis
23(2)	-
24	20
25(1)	21(1)
25(2)	21(1)
26(1)	21(2)
26(2)	21(2)
27	21(3)
28	22(1)
29	-
30	-
31	22(2)
32	23

[16]In previous sessions, the Commission had used the term "build-operate-transfer" (BOT) to refer to its work in this field.

[17]Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), paras. 225-230.

[18]Ibid., paras. 223-224.

[19]Ibid., Forty-eighth Session, Supplement No. 17 (A/48/17), paras. 297-301.

[20]Ibid., Forty-ninth Session, Supplement No. 17 and corrigendum (A/49/17 and Corr.1), paras. 208-314.

[21]Ibid., Fiftieth Session, Supplement No. 17 (A/50/17), paras. 374-381.

[22]Ibid., paras. 401-404.

[23]Ibid., Fortieth Session, Supplement No. 17 (A/40/17), annex I.

[24]Official Records of the United Nations Conference on the Carriage of Goods by Sea, Hamburg, 6-31 March 1978 (United Nations publication, Sales No. E.80.VIII.1), document A/CONF.89/13, annex I.

[25]Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), para. 254.

[26]United Nations, Treaty Series, vol. 1511, No. 26121.

[27]Ibid., vol. 1511, No. 26119.

[28]General Assembly resolution 43/165, annex, of 9 December 1988.

[29]A/CONF.152/13, annex.

[30]Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17 (A/47/17), annex I.

[31]Ibid., Forty-ninth Session, Supplement No. 17 and corrigendum (A/49/17 and Corr.1), annex I.

Annex I

[Original: Arabic/Chinese/English/
French/Russian/Spanish]

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

Preamble

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) protection and maximization of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

(1) This Law applies where:

(a) assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or

(b) assistance is sought in a foreign State in connection with a proceeding under [identify laws of the enacting State relating to insolvency]; or

(c) a foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] in respect of the same debtor are taking place concurrently; or

(d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under [identify laws of the enacting State relating to insolvency].

(2) This Law does not apply to a proceeding concerning [designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in this State and that this State wishes to exclude from this Law].

Article 2. Definitions

For the purposes of this Law:

(a) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(b) "foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;

(c) "foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;

(d) "foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(e) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(f) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Article 3. International obligations of this State

To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

Article 4. [Competent court or authority]*

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by [specify the court, courts, authority or authorities competent to perform those functions in the enacting State].

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*A State where certain functions relating to insolvency proceedings have been conferred upon government-appointed officials or bodies might wish to include in article 4 or elsewhere in chapter I the following provision:

Nothing in this Law affects the provisions in force in this State governing the authority of [insert the title of the government-appointed person or body].

Article 5. Authorization of [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to act in a foreign State

A [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] is authorized to act in a foreign State on behalf of a proceeding under [identify laws of the enacting State relating to insolvency], as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of a court or a [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to provide additional assistance to a foreign representative under other laws of this State.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II. ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THIS STATE

Article 9. Right of direct access

A foreign representative is entitled to apply directly to a court in this State.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to a court in this State by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]

A foreign representative is entitled to apply to commence a proceeding under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under [identify laws of the enacting State relating to insolvency]

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under [identify laws of the enacting State relating to insolvency].

Article 13. Access of foreign creditors to a proceeding under [identify laws of the enacting State relating to insolvency]

(1) Subject to paragraph (2) of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under [identify laws of the enacting State relating to insolvency] as creditors in this State.

(2) Paragraph (1) of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency], except that the claims of foreign creditors shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].*

Article 14. Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]

(1) Whenever under [identify laws of the enacting State relating to insolvency] notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have addresses in this State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(2) Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) indicate a reasonable time period for filing claims and specify the place for their filing;

(b) indicate whether secured creditors need to file their secured claims; and

(c) contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.

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*The enacting State may wish to consider the following alternative wording to replace article 13(2):

(2) Paragraph (1) of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency] or the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].

CHAPTER III. RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

(1) A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by:

(a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

Article 16. Presumptions concerning recognition

(1) If the decision or certificate referred to in article 15(2) indicates that the foreign proceeding is a proceeding within the meaning of article 2(a) and that the foreign representative is a person or body within the meaning of article 2(d), the court is entitled to so presume.

(2) The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17. Decision to recognize a foreign proceeding

(1) Subject to article 6, a foreign proceeding shall be recognized if:

(a) the foreign proceeding is a proceeding within the meaning of article 2(a);

(b) the foreign representative applying for recognition is a person or body within the meaning of article 2(d);

(c) the application meets the requirements of article 15(2); and

(d) the application has been submitted to the court referred to in article 4.

(2) The foreign proceeding shall be recognized:

(a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or

(b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of article 2(f) in the foreign State.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

(a) any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

(1) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

(a) staying execution against the debtor's assets;

(b) entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;

(c) any relief mentioned in article 21(1)(c), (d) and (g).

(2) [Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]

(3) Unless extended under article 21(1)(f), the relief granted under this article terminates when the application for recognition is decided upon.

(4) The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

(1) Upon recognition of a foreign proceeding that is a foreign main proceeding,

(a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;

(b) execution against the debtor's assets is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in paragraph (1) of this article are subject to [refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph (1) of this article].

(3) Paragraph (1) (a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Paragraph (1) of this article does not affect the right to request the commencement of a proceeding under [identify laws of the enacting State relating to insolvency] or the right to file claims in such a proceeding.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under article 20(1)(a);

(b) staying execution against the debtor's assets to the extent it has not been stayed under article 20(1)(b);

(c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under article 20(1)(c);

(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;

(f) extending relief granted under article 19(1);

(g) granting any additional relief that may be available to [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] under the laws of this State.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.

(3) In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 22. Protection of creditors and other interested persons

(1) In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph (3) of this article, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The court may subject relief granted under article 19 or 21 to conditions it considers appropriate.

(3) The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to creditors

(1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate [refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in this State to a person or body administering a reorganization or liquidation].

(2) When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding.

Article 24. Intervention by a foreign representative in proceedings in this State

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of this State are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV. COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a court of this State and foreign courts or foreign representatives

(1) In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State].

(2) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives

(1) In matters referred to in article 1, a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

(a) appointment of a person or body to act at the direction of the court;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the debtor's assets and affairs;

(d) approval or implementation by courts of agreements concerning the coordination of proceedings;

(e) coordination of concurrent proceedings regarding the same debtor;

(f) [the enacting State may wish to list additional forms or examples of cooperation].

CHAPTER V. CONCURRENT PROCEEDINGS

Article 28. Commencement of a proceeding under [identify laws of the enacting State relating to insolvency] after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under [identify laws of the enacting State relating to insolvency] may be commenced only if the debtor has assets in this State; the effects of that proceeding shall be restricted to the assets of the debtor that are located in this State and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of this State, should be administered in that proceeding.

Article 29. Coordination of a proceeding under [identify laws of the enacting State relating to insolvency] and a foreign proceeding

Where a foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

(a) when the proceeding in this State is taking place at the time the application for recognition of the foreign proceeding is filed,

(i) any relief granted under article 19 or 21 must be consistent with the proceeding in this State; and

(ii) if the foreign proceeding is recognized in this State as a foreign main proceeding, article 20 does not apply;

(b) when the proceeding in this State commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,

(i) any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in this State; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in article 20(1) shall be modified or terminated pursuant to article 20(2) if inconsistent with the proceeding in this State;

(c) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding

In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

(a) any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under [identify laws of the enacting State relating to insolvency], proof that the debtor is insolvent.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under [identify laws of the enacting State relating to insolvency] regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

Annex II

LIST OF DOCUMENTS BEFORE THE COMMISSION AT ITS THIRTIETH SESSION

A. General series

A/CN.9/430	Provisional agenda, annotations thereto and scheduling of meetings of the thirtieth session
A/CN.9/431 and Corr.1	Explanatory note by the UNCITRAL secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit
A/CN.9/432	Report of the Working Group on International Contract Practices on the work of its twenty-fifth session
A/CN.9/433	Report of the Working Group on Insolvency Law on the work of its twentieth session
A/CN.9/434	Report of the Working Group on International Contract Practices on the work of its twenty-sixth session
A/CN.9/435	Report of the Working Group on Insolvency Law on the work of its twenty-first session
A/CN.9/436	Draft Guide to Enactment of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency
A/CN.9/437	Report of the Working Group on Electronic Commerce on the work of its thirty-first session
A/CN.9/438 and Add.1-3	Draft chapters of a legislative guide on privately financed infrastructure projects
A/CN.9/439	Training and technical assistance
A/CN.9/440	Status of conventions
A/CN.9/441 and Corr.1	Bibliography of recent writings related to the work of UNCITRAL

B. Restricted series

A/CN.9/XXX/CRP.1 and Add.1-17	Draft report of the United Nations Commission on International Trade Law on the work of its thirtieth session
A/CN.9/XXX/CRP.2 and Add.1-2	Report of the Drafting Group

A/CN.9/XXX/CRP.3	Consideration of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: proposal by Australia, Canada, Germany, Islamic Republic of Iran, Netherlands, INSOL and IBA
A/CN.9/XXX/CRP.4	Consideration of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: proposal by Italy
A/CN.9/XXX/CRP.5	Consideration of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: proposal by Australia
A/CN.9/XXX/CRP.6	Consideration of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: proposal by United States of America
A/CN.9/XXX/CRP.7	Consideration of the UNCITRAL Model Legislative Provisions on Cross-Border Insolvency: proposal by Islamic Republic of Iran, INSOL and IBA
A/CN.9/XXX/CRP.9	Draft prepared by the Secretariat: adoption of the UNCITRAL Model Legislative Provisions and recommendation

97-24499 (E) 190997